

No. 23-3016

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LYLE RIKIO CUMMINGS,

Defendant-Appellant.

On Appeal From the United States District Court
for the District of Hawaii
Case No. 1:22-cr-00023-DKW

**APPELLEE'S SUPPLEMENTAL EXCERTPS OF RECORD
VOLUME 1 of 2**

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 UNITED STATES OF AMERICA,) CRIMINAL NO. 22-00023-DKW
5)
6 Plaintiff,) Honolulu, Hawaii
7)
8 vs.) June 8, 2023
9)
10 LYLE RIKIO CUMMINGS,)
11)
12 Defendant.)
13 _____)

14 TRANSCRIPT OF JURY TRIAL (DAY 2)
15 BEFORE THE HONORABLE DERRICK K. WATSON,
16 CHIEF UNITED STATES DISTRICT COURT JUDGE

17 APPEARANCES:

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Official Court Reporter: Gloria T. Bediamol, RPR RMR CRR FCRR
United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

23
24 Proceedings recorded by machine shorthand, transcript produced
25 with computer-aided transcription (CAT).

02:31PM 1 the proceedings or when the trial does not commence at the
02:31PM 2 designated time. I do handle other matters in addition to this
02:31PM 3 trial every day, and these other items of business may cause
02:31PM 4 interruptions or delays in trial. Delays are almost always
02:31PM 5 beyond the control of counsel, so please do not hold any delays
02:31PM 6 against either side. They are almost always my fault and I
02:31PM 7 accept that responsibility up front.

02:31PM 8 And finally, if any opinion contact with the court is
02:31PM 9 necessary, it must be done through Ms. Kimura. Please write a
02:31PM 10 note to her. I'm not suggesting that you all go out and do
02:31PM 11 that, but if it becomes necessary, communicate with her via
02:31PM 12 note. She will advise me of the issue or concern. Please do
02:31PM 13 not attempt to contact the Court, myself, directly except
02:32PM 14 through her.

02:32PM 15 All right. That's the end. Let's now turn to opening
02:32PM 16 statements by the parties.

02:32PM 17 Ms. Olson.

02:32PM 18 MS. OLSON: Good afternoon, everyone. This is a case
02:32PM 19 about a 46-year-old man who tried to persuade a 13-year-old
02:32PM 20 girl to meet him for sex. After she told him 4 times that she
02:32PM 21 was 13 years old, the defendant, Lyle Cummings, texted her in
02:32PM 22 graphic detail about how he wanted to have sex with her. He
02:32PM 23 tried to persuade her for 3 days to meet with him in person and
02:32PM 24 offered to give her drugs and cash, and on top of that, he was
02:32PM 25 caught with cocaine and crack packaged to distribute and sell.

02:33PM 1 Now let's talk in a little more detail about what
02:33PM 2 happened. In March of 2020, the defendant, who was
02:33PM 3 approximately 46 years old, went onto a social media platform
02:33PM 4 called Skout. Skout is an online platform where people can
02:33PM 5 look up other profiles of other Skout users and they can chat
02:33PM 6 with other Skout users. It's often used as a dating site.

02:33PM 7 The defendant, Lyle Cummings, had created his own
02:33PM 8 account. The user name that he created was Duckfat34. The
02:33PM 9 defendant went on Skout. He discovered the profile of a female
02:33PM 10 named Kiana and the defendant started a conversation that
02:33PM 11 lasted for three days.

02:34PM 12 Day one of the conversation on Skout. The defendant
02:34PM 13 almost immediately jumped in saying, "I'd like to take you
02:34PM 14 shopping." He repeatedly asked to meet Kiana in person. Kiana
02:34PM 15 responds with a few messages.

02:34PM 16 Day two of the conversation, again, the defendant
02:34PM 17 starts the conversation. The defendant again repeatedly asks
02:34PM 18 to meet Kiana in person. Kiana says, "Here's my phone number.
02:34PM 19 Can we please talk via text message. Let's move off Skout.
02:34PM 20 Let's talk via text." At the end of the Skout conversation,
02:34PM 21 she also asks for the defendant's name.

02:34PM 22 Within minutes the defendant texts Kiana and says,
02:34PM 23 "Hi. This is Lyle from Skout." The conversation then
02:35PM 24 continues over text message.

02:35PM 25 On day two Kiana says she is 13 very clearly in the

02:35PM 1 text messages. The defendant's very next text message to Kiana
02:35PM 2 after hearing that she is 13 years old, he says, quote, "I'll
02:35PM 3 grant you this once tonight. I'll come pick you up."

02:35PM 4 Later that same day Kiana again tells defendant she is
02:35PM 5 13 years old. Quite clearly. At that time the defendant
02:35PM 6 immediately responds with a text that says, "We can go to the
02:35PM 7 beach and have our own fun."

02:35PM 8 Day three of the conversation. The defendant again
02:35PM 9 starts the conversation. Kiana again says -- she tells him she
02:35PM 10 is 13. The way she says it this time is, "Are you okay with me
02:36PM 11 being 13?" The defendant replies via text, I'm's okay." He's
02:36PM 12 okay.

02:36PM 13 Kiana says that day she's 13 a fourth time. The
02:36PM 14 defendant responds he would like to take her shopping. He'd
02:36PM 15 like to take her to the beach and sleep under the stars with
02:36PM 16 her, take her to hotel rooms and spoil her. At some point in
02:36PM 17 the conversation he specifically says, "I'd like to take you to
02:36PM 18 the Victoria's Secret." He sends her an emoji of a bikini.

02:36PM 19 Now we're at the evening of day three of the
02:36PM 20 conversation. The defendant switches on day three from
02:36PM 21 offering her things like money, drugs, and he starts describing
02:36PM 22 in graphic detail how he would like to have sex with her. He
02:36PM 23 describes in detail how he wants to have oral sex with her and
02:36PM 24 intercourse with her, and that was after Kiana had said four
02:37PM 25 times she was 13 years old.

02:37PM 1 Over the three days of messages, the defendant
02:37PM 2 repeatedly offered to spend money on Kiana or just give her
02:37PM 3 money. In fact he sent her two photographs of large stacks of
02:37PM 4 cash. He specifically offered to give her marijuana if she met
02:37PM 5 up with him.

02:37PM 6 Also, over the course of the three-day conversation,
02:37PM 7 he asked Kiana to send pictures or videos of her 14 times and
02:37PM 8 he mentioned he would like to see some of her in the shower.

02:37PM 9 After many requests to meet up in person, Kiana -- or
02:37PM 10 sorry. After the defendant requests many times to meet up with
02:37PM 11 her in person, Kiana finally shares with him she is staying in
02:37PM 12 Kihei on Maui. They agree on a meet-up location. The
02:38PM 13 defendant specifically says he will show up in a Toyota truck.

02:38PM 14 Within minutes of learning Kiana's location, the
02:38PM 15 defendant goes on his phone and he does an Apple map search of
02:38PM 16 the location that they discussed.

02:38PM 17 He drives to meet her in his Toyota Tacoma truck.
02:38PM 18 When he gets to the meet-up location, he sees across the street
02:38PM 19 a person he believes to be Kiana and he flashes his truck
02:38PM 20 lights. He texts, "Cross the street. Jump in the truck."

02:38PM 21 What the defendant didn't know that evening when he
02:38PM 22 drove to pick up Kiana, there actually was no 13-year-old
02:38PM 23 Kiana. Instead he was greeted by officers from the Maui Police
02:38PM 24 Department who arrested him. So the defendant was never
02:39PM 25 actually talking to a 13-year-old named Kiana like he believed

02:39PM 1 he was. He was actually communicating with an undercover Maui
02:39PM 2 Police Department officer who played the role of Kiana. This
02:39PM 3 was an undercover law enforcement effort to prevent people from
02:39PM 4 sexually exploiting children.

02:39PM 5 After the defendant was arrested, officers impounded
02:39PM 6 his truck at the Kihei police station on Maui. They took the
02:39PM 7 defendant to Kihei police station and shortly after he arrived,
02:39PM 8 the defendant agreed and he participated in a voluntary
02:39PM 9 interview with law enforcement.

02:39PM 10 During this interview with law enforcement, he made a
02:39PM 11 number of admissions. He admitted he was talking to a minor
02:39PM 12 name Kiana. He admitted they had a conversation on Skout, but
02:39PM 13 then moved over to text messaging. He admitted that he
02:39PM 14 graphically described having oral sex with her. He admitted he
02:40PM 15 told her he would have money on him when they met up. He
02:40PM 16 actually admitted that he in fact did have cash in the truck
02:40PM 17 when he was arrested. He admitted he sent Kiana photographs of
02:40PM 18 money. He admitted he told Kiana he would take her shopping.

02:40PM 19 He told officers during the interview, his phone
02:40PM 20 number, and that was the same number that he in fact used to
02:40PM 21 write the messages. He told officers he had had the same phone
02:40PM 22 number for 20 years, his phone was password protected, no one
02:40PM 23 else had access to the phone. He also said it was an iPhone 7.

02:40PM 24 The next day, Maui police officers got a search
02:40PM 25 warrant. They searched his truck at the Kihei police station.

02:40PM 1 Truck had been impounded, but was still at the Kihei police
02:41PM 2 station. They got a search warrant. They searched the truck.
02:41PM 3 In the truck they found an iPhone 7, and you'll hear that
02:41PM 4 iPhone 7 was -- contained all of the messages that were
02:41PM 5 exchanged between the defendant and the undercover officer.
02:41PM 6 Law enforcement, while searching the truck, also found
02:41PM 7 several pieces of identification, which made it clear Lyle
02:41PM 8 Cummings owned the truck, and several pieces of identification
02:41PM 9 that were his, including his Hawaii driver's license.
02:41PM 10 In the back of the truck was a hat that said DuckFat.
02:41PM 11 As you will recall, DuckFat matched the Skout profile of
02:41PM 12 DuckFat34. Officers also found marijuana, THC. THC is a
02:41PM 13 chemical that's found in marijuana.
02:42PM 14 In the -- in the -- hidden inside the center console
02:42PM 15 of the truck between the two front seats, officers found 18
02:42PM 16 baggies of cocaine and crack packaged for distribution and
02:42PM 17 sale.
02:42PM 18 As the judge mentioned, government has charged
02:42PM 19 defendant with two counts. The first count is attempting to
02:42PM 20 persuade, coerce, induce or entice a minor into sexual
02:42PM 21 activity. Now, note, this is an attempt charge because there
02:42PM 22 was no real Kiana, so he was not able to complete any act.
02:42PM 23 At the end of the case, I anticipate the judge will
02:42PM 24 instruct you on the law and I anticipate that you'll hear it
02:42PM 25 doesn't matter that Kiana was fictional, it doesn't matter that

02:42PM 1 the defendant was actually talking to an undercover officer,
02:42PM 2 and it doesn't matter that the sexual activity did not actually
02:42PM 3 occur. What matters is that the defendant believed he was
02:43PM 4 speaking to a minor and the defendant attempted to persuade or
02:43PM 5 induce that minor into sexual activity.

02:43PM 6 The evidence will show he took substantial steps to
02:43PM 7 complete the crime, including driving his truck to the meet-up
02:43PM 8 location. That's a substantial step.

02:43PM 9 Second count in the case, possession with intent to
02:43PM 10 distribute cocaine and crack. In the course of the trial you
02:43PM 11 may hear the term "cocaine base" and that's commonly referred
02:43PM 12 to as crack. The evidence will show the defendant possessed
02:43PM 13 cocaine and crack, and also that he intended to sell it or
02:43PM 14 distribute it.

02:43PM 15 During this trial you're going to see the Skout
02:43PM 16 profiles that Kiana and defendant had for Skout. You will see
02:43PM 17 Kiana's profile included a picture of a female with a dog nose
02:43PM 18 and ears filter, and learned her profile stated that she was
02:44PM 19 35 years old. The undercover officer will explain to you why
02:44PM 20 they put 35 years old on the profile, but you will see after
02:44PM 21 the conversation began, Kiana did tell the defendant four times
02:44PM 22 that she was only 13.

02:44PM 23 You'll get to read the words of the defendant in all
02:44PM 24 of the online chats and text messages, and you'll see pictures
02:44PM 25 and emojis that they exchanged. The messages in this case will

02:44PM 1 have some language that's a little bit difficult to hear,
02:44PM 2 there's some difficult material here, but the defendant chose
02:44PM 3 to use those sexually explicit words and concepts. I'm not
02:44PM 4 going to repeat the language now in the opening statement, but
02:44PM 5 unfortunately you will hear it in the case because it is
02:44PM 6 evidence in this case. The undercover officer will read the
02:45PM 7 chats and you'll hear these are defendant's own words to
02:45PM 8 someone he believed was a minor.

02:45PM 9 You'll get to watch a video recording of the interview
02:45PM 10 that the defendant gave after shortly after he was arrested.
02:45PM 11 You'll here testimony from an officer who participated in that
02:45PM 12 interview.

02:45PM 13 You're going to see in the course of the trial,
02:45PM 14 numerous photographs showing what was found in the defendant's
02:45PM 15 truck when law enforcement searched it pursuant to the search
02:45PM 16 warrant. You're going to see photographs of the cocaine, crack
02:45PM 17 marijuana and THC that was found in the truck.

02:45PM 18 You'll hear from one of the officers who performed the
02:45PM 19 search of the truck, and in this trial you're going to hear
02:45PM 20 some technical information from the officer who examined the
02:45PM 21 defendant's iPhone 7 that was taken from the truck during the
02:45PM 22 search warrant. And you're going to hear from that witness and
02:46PM 23 that officer that they found the same text messages that
02:46PM 24 matched up with what the undercover had on his end.

02:46PM 25 You're also going to hear from a criminalist, who

02:46PM 1 tested the drugs and determined there was in fact cocaine,
02:46PM 2 crack and THC in the truck.

02:46PM 3 You're going to hear a drug expert. Drug expert is
02:46PM 4 going to opine that the cocaine and crack was packaged for
02:46PM 5 distribution and sale, and the drug expert will explain the
02:46PM 6 reasons that -- in his experience that led him to that opinion.

02:46PM 7 We plan to tell you most of the story in chronological
02:46PM 8 order; in other words, how the events actually occurred, but
02:46PM 9 because of some scheduling issues, we have a short day and
02:46PM 10 tomorrow, I believe, that there may be a couple witnesses we
02:46PM 11 need to call a little bit out of order, but rest assured I'll
02:47PM 12 have another chance to come and talk to you in closing
02:47PM 13 arguments, and I'll be able to tie that up and put it back in
02:47PM 14 order for you, so bear with us on that.

02:47PM 15 Members of the jury, this case is straightforward.
02:47PM 16 The facts are not complicated. Most of the evidence in this
02:47PM 17 case consists of the defendant's own words and actions. The
02:47PM 18 evidence will show he was texting with a minor, a 13-year-old
02:47PM 19 -- I'm sorry. Excuse me. The evidence will show he believed
02:47PM 20 he was texting with a minor who was 13 years old and he
02:47PM 21 persisted in his attempts to meet up with her without
02:47PM 22 hesitating for a moment. He stated clearly what his intentions
02:47PM 23 were; he wanted to have sex with her.

02:47PM 24 At the end of this trial, we'll come back and ask you
02:47PM 25 to find the defendant, Lyle Cummings, guilty on both counts.

02:47PM 1 Thank you.

02:47PM 2 THE COURT: Mr. Mottl, when you're ready, openings.

02:48PM 3 MR. MOTTL: Thank you, Your Honor.

02:48PM 4 Good afternoon again, ladies and gentlemen of the

02:48PM 5 jury.

02:48PM 6 The defense expects in part that the evidence will

02:48PM 7 show, one, that Lyle Rikio Cummings, born on Maui and raised,

02:48PM 8 lived in the community with his parents. Hali'imaile, I'm not

02:48PM 9 sure if you know Maui, but it's a bit a way up Haleakala, a

02:48PM 10 former plantation community, and he went to high school there.

02:48PM 11 He graduated from Maui high. He gained employment with the

02:49PM 12 County of Maui and worked for 27 years in the parks department,

02:49PM 13 and for much of that time he was working at the Kihei Regional

02:49PM 14 Park and was in charge of maintaining the lawn, the large areas

02:49PM 15 of lawn in both the athletic fields and in other areas for

02:49PM 16 picnicking and other things. Primarily it was watered

02:49PM 17 automatically, but primarily he cut grass and maintained the

02:49PM 18 grounds otherwise.

02:49PM 19 He lost the job when this incident took place and he

02:49PM 20 is now employed at a private company that's developing former

02:49PM 21 agricultural land and producing table vegetables and fruits to

02:49PM 22 be sold locally. He operates a machine and not far from where

02:50PM 23 he lives in Hali'imaile, which used to be I believe it was

02:50PM 24 pineapple and may have been partially sugar cane.

02:50PM 25 He has no children. At the time of this incident he

03:07PM 1 he not?

03:07PM 2 MS. OLSON: Yes.

03:07PM 3 THE COURT: Then he may remain.

03:07PM 4 MS. OLSON: Thank you.

03:07PM 5 Government calls Detective John Surina.

03:07PM 6 JOHN SURINA,

03:07PM 7 called as a witness, having been first duly sworn, was examined

03:07PM 8 and testified as follows:

03:07PM 9 THE CLERK: Please state your full name, spelling your

03:07PM 10 last name for the record.

03:08PM 11 THE WITNESS: John Surina. The last name is spelled

03:08PM 12 S-U-R-I-N-A.

03:08PM 13 DIRECT EXAMINATION

03:08PM 14 BY MS. OLSON:

03:08PM 15 Q Good afternoon.

03:08PM 16 A Afternoon.

03:08PM 17 Q Could you please state your current employment?

03:08PM 18 A I'm employed as a sergeant with the Maui Police

03:08PM 19 Department.

03:08PM 20 Q And how long have you been so employed?

03:08PM 21 A Nineteen years.

03:08PM 22 Q Where were you before that?

03:08PM 23 A Before the Maui Police Department?

03:08PM 24 Q Yes.

03:08PM 25 A I was -- before I moved to Maui, I was in Tucson, Arizona.

03:08PM 1 Q Were you so employed in March of 2020?

03:08PM 2 A Yes, ma'am.

03:08PM 3 Q Could you give a very brief overview of your training and
03:08PM 4 experience as an officer?

03:08PM 5 A In relationship to this case?

03:08PM 6 Q Just generally very briefly first.

03:08PM 7 A In 2003 I was hired by the Maui Police Department. I went
03:09PM 8 through the training academy put on by the Maui Police
03:09PM 9 Department where I went through recruit school, a field
03:09PM 10 training officer program.

03:09PM 11 From there I was in the Wailuku patrol division for
03:09PM 12 approximately seven years where I attended various trainings
03:09PM 13 related to narcotics and related to SWAT operations and
03:09PM 14 whatnot.

03:09PM 15 2011 I went to the Crime Reduction Unit, and then in
03:09PM 16 2015 I was promoted to sergeant where I went to the Criminal
03:09PM 17 Investigation Division. While in the Criminal Investigation
03:09PM 18 Division, I received specialized training conducted by the
03:09PM 19 Internet Crimes Against Children, the ICAC task force, as well
03:09PM 20 as the FBI.

03:09PM 21 Q Any other training or experience you can highlight that is
03:09PM 22 related to exploitation of children that are relevant to this
03:09PM 23 case?

03:09PM 24 A Sure. Through the ICAC program I went to the
03:10PM 25 investigative training and tactics techniques, excuse me,

03:10PM 1 course. And through the FBI I went through the Online Covert
03:10PM 2 Employee Course.

03:10PM 3 I also attended a Crimes Against Children Conference
03:10PM 4 and the Crimes Against Women conference.

03:10PM 5 Q And do you have training and experience in conducting or
03:10PM 6 being part of undercover operations?

03:10PM 7 A Correct.

03:10PM 8 Q Can you describe that a bit?

03:10PM 9 A Well, I went through, excuse me, mentoring and experience
03:10PM 10 through the Washington State Patrol Missing and Exploited
03:10PM 11 Children Task Force, as well as through -- used being a chatter
03:10PM 12 in approximately ten enticement operations.

03:10PM 13 Q What do you call those enticement operations?

03:10PM 14 A The ones in Hawaii are called nickname Operation Keiki
03:10PM 15 Shield.

03:10PM 16 Q Could you tell the jury just a brief overview of what
03:10PM 17 Operation Keiki Shield is generally.

03:10PM 18 A Sure. Operation Keiki Shield is an enticement operation
03:11PM 19 consisting of undercover chat operations in order to identify,
03:11PM 20 locate and arrest those individuals who would perpetrate
03:11PM 21 commercial and noncommercial sex crimes against children.

03:11PM 22 Q And what's your experience been with Operation Keiki
03:11PM 23 Shield? How many such operations have you participated in?

03:11PM 24 A Approximately ten operations with OKS, as well as with
03:11PM 25 Washington State Patrol Operation Net Nanny.

03:11PM 1 Q What's been your role in those operations?

03:11PM 2 A As a chatter.

03:11PM 3 Q Can you explain what a chatter is?

03:11PM 4 A A chatter is somebody that does the communication portion
03:11PM 5 of the enticement operation, so they use the various
03:11PM 6 applications as well as websites to communicate with those
03:11PM 7 individuals mentioned before.

03:11PM 8 Q So it's common practice of the Maui Police Department to
03:12PM 9 create fake profiles in these operations?

03:12PM 10 A During these operations, for the specific one, the Maui
03:12PM 11 Police Department conducted an operation from March 12th
03:12PM 12 through March 16th in 2020 based out of the Kihei police
03:12PM 13 station with partnership with the Hawaii Internet Crimes
03:12PM 14 Against Children Task Force, as well as the various federal,
03:12PM 15 state and federal local partners. It was done at the Maui
03:12PM 16 Police Station, and yes, we were used as a chatter -- I was
03:12PM 17 used as a chatter in those such operations.

03:12PM 18 Q Going back to the March 2020 Operation Keiki Shield, can
03:12PM 19 you describe a little generally, were there teams? How was it
03:12PM 20 set up?

03:12PM 21 A Sure. It was conducted at the Kihei police station and it
03:12PM 22 consisted of a chatter, a chat group, as well as intelligence
03:12PM 23 analysts, as well as people that conducted interviews, people
03:13PM 24 that conducted surveillance, people that were on the arrest
03:13PM 25 team.

03:13PM 1 Q You mentioned you were a chatter in this operation. Just
03:13PM 2 to go back, do you have an actual certification to be a chatter
03:13PM 3 in these types of operations?

03:13PM 4 A Yes.

03:13PM 5 Q Can you describe that certification?

03:13PM 6 A It was issued by the FBI, Federal Bureau of Investigation,
03:13PM 7 as through the Online Covert Employee Course in 2017.

03:13PM 8 Q So you take a course and then you become certified as a
03:13PM 9 chatter?

03:13PM 10 A Correct.

03:13PM 11 Q So let's talk more about March 2020 and the specific
03:13PM 12 operation.

03:13PM 13 Are you familiar with someone named Lyle Cummings?

03:13PM 14 A Yes, ma'am.

03:13PM 15 Q And generally how are you familiar with him?

03:13PM 16 A He was the individual that I was chatting -- one of the
03:13PM 17 individuals that I was chatting with during that operation.

03:13PM 18 Q And how did you begin chatting with Mr. Cummings?

03:13PM 19 A I began chatting with him on a web-based social media
03:14PM 20 application, dating application, called Skout.

03:14PM 21 Q And how is it that this conversation began? Did you --
03:14PM 22 how is it that you were -- let me back up.

03:14PM 23 Why did law enforcement choose Skout?

03:14PM 24 A So Skout is the developer of a location-based, social
03:14PM 25 media dating application, whereby users would create a profile

03:14PM 1 that might have information about themselves or pictures of
03:14PM 2 them, and they would in turn exchange messages with other users
03:14PM 3 in that platform.

03:14PM 4 And from our training and experience, there is some
03:14PM 5 users of Skout that have sexually exploited children in the
03:14PM 6 past.

03:14PM 7 Q What does the law enforcement team who is conducting this
03:14PM 8 operation do to cause someone to start a conversation?

03:15PM 9 A Well, we created -- I myself created a profile on Skout
03:15PM 10 using an undercover officer, a picture of an undercover
03:15PM 11 officer.

03:15PM 12 Q Could you please turn to Exhibit 1 in front of you?

03:15PM 13 A Sorry. Where is it?

03:15PM 14 MS. OLSON: Could we please publish Exhibit 1?

03:15PM 15 THE COURT: Exhibit 1 has been stipulated into
03:15PM 16 evidence, correct?

03:15PM 17 MS. OLSON: Yes, Your Honor.

03:15PM 18 THE COURT: You may publish when ready.

03:15PM 19 (Government's Exhibit 1, which was previously
03:15PM 20 stipulated into evidence, was published to the jury.)

03:15PM 21 BY MS. OLSON:

03:15PM 22 Q You got Exhibit 1 in front of you on the screen?

03:15PM 23 A Yes, ma'am.

03:15PM 24 Q Okay. Thank you.

03:15PM 25 What is Exhibit 1?

03:15PM 1 A Exhibit 1 you see there is my profile that I created on
03:16PM 2 Skout with a picture of undercover officer from the Maui Police
03:16PM 3 Department Nicolai Ariga.
03:16PM 4 Q Why does she have this sort of dog nose filter on there?
03:16PM 5 A That's a Snapchat type filter that is commonly used by
03:16PM 6 young adults and teens.
03:16PM 7 Q What's listed at the top of the Exhibit 1?
03:16PM 8 A Sure. The top of the page in blue, right there is the
03:16PM 9 name for my profile, a persona name of Kiana, and 35 was my
03:16PM 10 persona's age.
03:16PM 11 Q Why did you choose 35?
03:16PM 12 A Basically it was a random number; however, it was part of
03:16PM 13 kind of a contrast 35 with the age -- purported age of the
03:16PM 14 individual that appeared for Officer Ariga would appear much
03:17PM 15 younger than the age of 35 as well.
03:17PM 16 Q Why didn't you say 13 at the top?
03:17PM 17 A The users of Skout, you have to be 18 years or older to
03:17PM 18 use Skout.
03:17PM 19 Q Is it fair to say in order to put out the profile, you
03:17PM 20 could not have listed a number -- an age under 18?
03:17PM 21 A Yes, ma'am.
03:17PM 22 Q Why didn't you say 18 then?
03:17PM 23 A Because I wanted to have more of a contrast of age that
03:17PM 24 would be -- appear that I wasn't just on the cusp of 18.
03:17PM 25 Q Have you used this particular profile before in other

03:17PM 1 operations?

03:17PM 2 A No.

03:17PM 3 Q This was created for this particular operation in

03:17PM 4 March 2020?

03:17PM 5 A Yes.

03:17PM 6 Q Approximately when did you put this profile up on Skout?

03:18PM 7 A It was around midnight of March 12th, 13th, 2020.

03:18PM 8 Q If you could turn to page 2 of Exhibit 1, please.

03:18PM 9 What is page 2?

03:18PM 10 A Page 2 as you see is my profile on Skout.

03:18PM 11 Q Who would see this page 2?

03:18PM 12 A Any other person that I might connect with on the social

03:18PM 13 media dating application of Skout, so this is my profile in the

03:18PM 14 Skout application.

03:18PM 15 Q So in the operation you said you posted the profile on

03:19PM 16 Skout and then what happened?

03:19PM 17 A So I created this profile, the about me section and my

03:19PM 18 name, and so on so forth. And then after you post your

03:19PM 19 profile, then you're amongst the other pool of profiles in the

03:19PM 20 Skout platform. You have a profile and everybody else has a

03:19PM 21 profile.

03:19PM 22 Q Could you please turn to what's been previously admitted

03:19PM 23 by stipulation, Exhibit 2?

03:19PM 24 MS. OLSON: And could the Court please publish that?

03:19PM 25 THE COURT: Yes. It's an admitted exhibit again. You

03:19PM 1 may publish.

03:19PM 2 (Government's Exhibit 2, which was previously

03:19PM 3 stipulated into evidence, was published to the jury.)

03:19PM 4 BY MS. OLSON:

03:19PM 5 Q What is Exhibit 2?

03:19PM 6 A This exhibit is that of Mr. Cummings and the title of his

03:19PM 7 profile, the name on the top there is Duckfat34.

03:19PM 8 Q And who would create that profile name?

03:20PM 9 A The user of that Skout profile would create that name. In

03:20PM 10 this case it would be Mr. Cummings.

03:20PM 11 Q So it's not somehow automatically assigned by the Skout

03:20PM 12 program or something like that.

03:20PM 13 A Correct.

03:20PM 14 Q What age does it say at the top for him?

03:20PM 15 A It says 109.

03:20PM 16 Q Who would see the details below?

03:20PM 17 A Any other users of the Skout profile. Any other users of

03:20PM 18 the Skout application that would click on his profile.

03:20PM 19 Q And did this profile -- does this profile relate to your

03:20PM 20 investigation on March 2020 somehow?

03:20PM 21 A Yes.

03:20PM 22 Q What happened with it?

03:20PM 23 A This was the profile that contacted me in my persona of

03:20PM 24 Kiana during the investigation.

03:20PM 25 Q Do you recall about at what point, because you said you

03:21PM 1 posted your profile, at what point did you get this contact
03:21PM 2 from Duckfat34?

03:21PM 3 A I believe it was on March 13th. Within 24 hours of me
03:21PM 4 creating my profile of Kiana, I was contacted by DuckFat34.

03:21PM 5 Q So your testimony is you didn't reach out to DuckFat,
03:21PM 6 DuckFat reached out to you first; is that correct?

03:21PM 7 A Correct.

03:21PM 8 Q Please turn to Exhibit 3 as has been previously admitted
03:21PM 9 by stipulation, or agreement I should say, of the parties?

03:21PM 10 MS. OLSON: And could the Court please publish this?

03:21PM 11 THE COURT: Yes, you may as an admitted exhibit by
03:21PM 12 stip.

03:21PM 13 (Government's Exhibit 3, which was previously
03:21PM 14 stipulated into evidence, was published to the jury.)

03:21PM 15 BY MS. OLSON:

03:21PM 16 Q What is Exhibit 3?

03:21PM 17 A This exhibit is the chat communication that I had with
03:21PM 18 Mr. Cummings in the persona of Kiana on the Skout platform.

03:22PM 19 Q So could you just describe the layout of the first page
03:22PM 20 for the jury?

03:22PM 21 A Sure. On the top there you see the name Duckfat34.

03:22PM 22 Below that you see the image, his picture on his
03:22PM 23 profile of the duck in the middle.

03:22PM 24 On the left side is the messages that were sent by
03:22PM 25 Mr. Cummings in white.

03:22PM 1 On the right it will be the messages that were sent by
03:22PM 2 me in the persona of Kiana in blue.

03:22PM 3 Q Could you look at page 2? Could you explain why it
03:22PM 4 appears the last line on page 1 repeats at the top of page 2?

03:22PM 5 A That's just due to the formatting of this post, this
03:23PM 6 exhibit. The words are not repeated.

03:23PM 7 Q Going back one step, before we jump into going through
03:23PM 8 these actual messages, did you or law enforcement somehow
03:23PM 9 target Duckfat34 in your operation?

03:23PM 10 A No.

03:23PM 11 Q Had you heard of Duckfat34 before?

03:23PM 12 A No.

03:23PM 13 Q Had you heard of Lyle Cummings before?

03:23PM 14 A No.

03:23PM 15 Q At this point I would ask you to please read out loud all
03:23PM 16 of the messages in Exhibit 3.

03:23PM 17 A Sure. The first on the top of the left, Cummings, "Hi
03:23PM 18 Kiana. Happy Aloha Friday. Walk the shops of Wailea or out
03:24PM 19 Lahaina."

03:24PM 20 Right, Kiana, "Huh."

03:24PM 21 Cummings, "Go watch the noon reflection on the ocean."
03:24PM 22 "Moon." "Wyd."

03:24PM 23 Q Let me stop you. I'm going to stop you and ask you a few
03:24PM 24 questions as we read through these.

03:24PM 25 What does WYD mean in your training and experience?

03:24PM 1 A Training and experience, WYD would be what are you doing.

03:24PM 2 Q Since there's quite a few emojis in here, could you just
03:24PM 3 explain basically to the jury, what is an emoji?

03:24PM 4 A An emoji would be a picture to add representative meaning
03:24PM 5 that you use in text messages.

03:24PM 6 Q Could you please turn to page 2 and continue reading, and
03:24PM 7 no need to reread the top line which you already read.

03:24PM 8 A Correct. To the left, Cummings --

03:24PM 9 Q Could I just ask, just read the text only just so it's not
03:24PM 10 confusing as to what's in the text and what's your commentary.

03:25PM 11 A "What kind of fun you looking for?"

03:25PM 12 "Umm okay. Just bored at my cousins in Kihei."

03:25PM 13 "Like me come rescue you. Come pick you up?? Still
03:25PM 14 early can go Lahaina or out Makana. You like have fun or no
03:25PM 15 can?"

03:25PM 16 To the right in the blue, "Sry. Cousin had drama.
03:25PM 17 lame." Eye rolling emoji. "When you wake up, maybe we hang
03:25PM 18 out later tonight or this evening catch the sunset." Hand
03:25PM 19 waving emojis.

03:25PM 20 "Good morning LOL."

03:25PM 21 "Mornin."

03:25PM 22 "Got any plans for the evening n tonight?."

03:25PM 23 "Not really. U?"

03:25PM 24 "Nothing really. Take you catch the sunset n go by
03:26PM 25 the Shops of Wailea or Lahaina.

03:26PM 1 "Okay. Maybe not. Guess just kick at home." Blowing
03:26PM 2 wind emojis. "Couple watch a flick."
03:26PM 3 "Cool. I'm in Kihei 2nite. Bored."
03:26PM 4 "Can I come down rescue you for a few hours?..?"
03:26PM 5 "LOL. Maybe you wanna text? This app is glitchy AF."
03:26PM 6 Q Sorry. I'll stop you there. I'm sorry to make you say
03:26PM 7 this, but what does AF stand for?
03:26PM 8 A The common vernacular slang for as fuck.
03:26PM 9 Q Page 4, please.
03:26PM 10 A On the left, "Yeah can."
03:26PM 11 Blue on the right. "793-4791. What's ur name?"
03:27PM 12 Q Now, you're acting as the role of Kiana, correct?
03:27PM 13 A Yes, ma'am.
03:27PM 14 Q Why do you give your phone number?
03:27PM 15 A In order to have a more intimate real connection with
03:27PM 16 somebody as opposed to just being a bot or somebody on a chat
03:27PM 17 platform, you can give them the phone number in order to have
03:27PM 18 more of a one-on-one conversation with them. Sometimes as well
03:27PM 19 the app can be glitchy.
03:27PM 20 Q And why do you ask what's your name?
03:27PM 21 A Because it doesn't really have a name under his profile as
03:27PM 22 opposed to just Duckfat34.
03:27PM 23 Q Please turn to Exhibit 4.
03:27PM 24 MS. OLSON: And this has been previously agreed upon
03:27PM 25 to be admitted by the parties. If this could be please

03:27PM 1 published.

03:27PM 2 THE COURT: Yes. If it's been admitted by

03:27PM 3 stipulation, you may publish when ready.

03:27PM 4 MS. OLSON: We also -- the parties also agreed, prior

03:27PM 5 to trial and pursuant to the government's motion in limine,

03:27PM 6 that we could hand out physical copies of Exhibit 4 to the jury

03:28PM 7 so that they may follow along the text conversation as its

03:28PM 8 read. May we hand hard copies out to the jury now?

03:28PM 9 THE COURT: Yes, you may.

03:28PM 10 MS. OLSON: Thank you.

03:28PM 11 (Government's Exhibit 4, which was previously

03:28PM 12 stipulated into evidence, was published to the jury.)

03:28PM 13 THE COURT: As Exhibit 4 is being distributed, I will

03:28PM 14 let our jurors know as I will when I instruct you at the end of

03:28PM 15 this case, that these transcripts have been prepared by the

03:28PM 16 government to aid as you listen to the recount of the exchange

03:28PM 17 of text messages, and you'll see later on when we get to the

03:28PM 18 video evidence that the same would be true. The text messages,

03:29PM 19 the videos that are displayed are the actual evidence. The

03:29PM 20 transcripts are not.

03:29PM 21 So if Officer Surina reads the text in a manner that

03:29PM 22 is inconsistent with what you see on the text messages or if

03:29PM 23 you hear video that is inconsistent, the audio portion that is,

03:29PM 24 that is inconsistent with the transcript that you're given, it

03:29PM 25 is your recollection of what you see and what you hear that is

03:29PM 1 the actual evidence, not what is in front of you.

03:29PM 2 BY MS. OLSON:

03:29PM 3 Q Detective Surina, can you see Exhibit 4 in front of you?

03:29PM 4 A Yes, ma'am.

03:29PM 5 Q Can you generally describe what this is.

03:29PM 6 A This is a printout of the text message conversation that I
03:29PM 7 had in the persona of Kiana with Mr. Cummings.

03:29PM 8 Q And could you describe the general layout, the colors and
03:30PM 9 discuss the layout of this.

03:30PM 10 A Sure. The text messages that were sent by Mr. Cummings
03:30PM 11 are in orange as you see in the top left where it says,
03:30PM 12 "Speaker Cummings (808)357-3711."

03:30PM 13 Text messages by myself in the persona of Kiana are in
03:30PM 14 green as when you see on the left, "Kiana (808) 793-4791."

03:30PM 15 The next to the right is the date. That's the date
03:30PM 16 the text messages were sent, and next to that is the time that
03:30PM 17 the text messages were sent.

03:30PM 18 To the right of that where it says "Text Message" is
03:30PM 19 where the content of the text message is.

03:30PM 20 Q Thank you.

03:30PM 21 So I'll now ask you if you can please read all of the
03:30PM 22 text messages, not including the date and time. I think it
03:31PM 23 would be helpful if you could just say Cummings and then
03:31PM 24 exactly what Mr. Cummings said, and then when it switches to
03:31PM 25 Kiana, if you could say Kiana, it might help the jury to follow

03:31PM 1 the change in speakers a bit; but then if you could just read
03:31PM 2 exactly what it says, briefly describing emojis and photographs
03:31PM 3 in the document.

03:31PM 4 A Yes, ma'am.

03:31PM 5 THE COURT: I just have some questions. The first
03:31PM 6 text message that appears on this exhibit, Exhibit 4, is this
03:31PM 7 the first communication that you had with DuckFat34 since the
03:31PM 8 communications in the previous exhibit that were occurring via
03:31PM 9 the Skout platform?

03:31PM 10 THE WITNESS: Yes, sir.

03:31PM 11 THE COURT: So you've now transferred your
03:31PM 12 communications to just simple text message.

03:31PM 13 THE WITNESS: Yes, sir.

03:31PM 14 THE COURT: Thank you.

03:31PM 15 BY MS. OLSON:

03:31PM 16 Q The Court brings up a very good point. If you can just
03:31PM 17 reference actually back to the last page of Exhibit 3 and then
03:31PM 18 look at the first page of Exhibit 4 before you start the
03:31PM 19 reading.

03:31PM 20 How much time is there between the end of the Skout
03:32PM 21 conversation and the beginning of the text message
03:32PM 22 conversation? Roughly.

03:32PM 23 A From 7:20, that text message conversation of 7:20 p.m.
03:32PM 24 providing the phone number, and 7:37 the first text message was
03:32PM 25 received, so approximately 17 minutes, 15 minutes.

03:32PM 1 Q At the top of page 1 of Exhibit 4, and I apologize if you
03:32PM 2 said this and I didn't catch it, but there's a Cummings and
03:32PM 3 there's a phone number.

03:32PM 4 What is that entry for?

03:32PM 5 A That is Cummings' phone number that he used to communicate
03:32PM 6 via text message.

03:32PM 7 Q Okay. So is it correct this is the same day as the end of
03:32PM 8 the Skout conversation?

03:32PM 9 A Yes, ma'am.

03:33PM 10 Q Okay. If you could please begin your reading and I will
03:33PM 11 stop you occasionally to ask you some clarifying questions.

03:33PM 12 A From the top, "Cummings Hi Kiana my name Lyle. From Skout
03:33PM 13 LOL."

03:33PM 14 Kiana. Hand waving emoji. "Howzit!!!"

03:33PM 15 "Cummings. "You out in Kihei??"

03:33PM 16 "Kiana: Yeah. Cruisin at my cousins place, her
03:33PM 17 parents outta town."

03:33PM 18 "Cummings. What time I coming pick you up? You have
03:33PM 19 a picture with no filter blocking your face."

03:33PM 20 "Kiana. Yeah, but upfront I'm waaay younger. Just
03:33PM 21 put a random number in my profile."

03:33PM 22 "Cummings. Like how old.. age no matter if we going
03:33PM 23 out hanging out having a good time. What time you like me come
03:34PM 24 down??"

03:34PM 25 "Kiana. Cool." Blushing emoji. "Well, upfront I'm

03:34PM 1 14, well, I turn 14 next month, just hate stupid kids my age."

03:34PM 2 Q I might stop you there.

03:34PM 3 So why do you say that?

03:34PM 4 A To inform him of my age and that as a 13-year-old,

03:34PM 5 generally sometimes they like older guys. Don't like kid

03:34PM 6 games.

03:34PM 7 Q Okay. Please continue.

03:34PM 8 A "Cummings. I yah I'll grant you this once tonight. I'll

03:34PM 9 come pick you up."

03:34PM 10 "Kiana: Grant me what?????" Upside down emoji.

03:34PM 11 "Cummings. Let me see a picture without a filter

03:34PM 12 covering your face. Hang out tonight. Come down rescue you

03:34PM 13 for a few hours from your cousin." The message is repeated.

03:34PM 14 Q Let me stop you.

03:34PM 15 Why is the message repeated exactly the same in two

03:35PM 16 entries there?

03:35PM 17 A I don't know.

03:35PM 18 Q Continue, please.

03:35PM 19 A "Have a good weekend."

03:35PM 20 "Kiana." There's a picture image of UC, Undercover

03:35PM 21 Officer, Nicolai Ariga from the Maui Police Department.

03:35PM 22 "Cummings. You wanna go hang out? Take you to the

03:35PM 23 Shops Wailea or at Lahaina. What time I can come pick you up

03:35PM 24 tonight? Yes, no?"

03:35PM 25 "Kiana. Maybe. Sorry -- Sry. Drama with my gf.

03:35PM 1 "Cummings. With your gf?? Let spoil you." An image
03:35PM 2 of hundred dollar bills fanned out." Let me come pick you up
03:36PM 3 take you away from the drama."
03:36PM 4 "Kiana. Damn!! That sounds so much better than this
03:36PM 5 stupid BS" smiley face.
03:36PM 6 "Kiana. Girlfriend drama."
03:36PM 7 "Cummings. I'll be your sugar daddy. Send me couple
03:36PM 8 more pictures of you."
03:36PM 9 "Kiana." Emojis of various candy, snow cone, cupcake.
03:36PM 10 "I likey. Can you send me pic 2?"
03:36PM 11 Q Let me stop you there.
03:36PM 12 Why do you ask Cummings to send you a picture?
03:36PM 13 A Because he asked me to send him a picture of myself and I
03:36PM 14 wanted to see another picture of him in order to see what he
03:36PM 15 really looked like as opposed to the Skout profile pictures
03:36PM 16 that he had.
03:36PM 17 Q Okay. Thank you.
03:37PM 18 A "Cummings. Should I start to drive come down." Message
03:37PM 19 repeated. "Okay."
03:37PM 20 "Kiana." A picture of Officer Ariga.
03:37PM 21 "Cummings. So am I going to see you tonight?.,
03:37PM 22 "Kiana. Maybe. Gotta tryna get away from my
03:37PM 23 girlfriend. What u got in mind."
03:37PM 24 "Cummings. What Evers you like do. I get..." money
03:37PM 25 symbol "...for us to have fun. What you like do?."

03:37PM 1 "Kiana. What kinda fun you gonna do wit a 13-year-old

03:37PM 2 girl? I can't go into bars."

03:37PM 3 Q Let me stop you.

03:37PM 4 Why did you ask him that?

03:37PM 5 A To begin to understand his intention of what he was

03:37PM 6 looking for.

03:37PM 7 Q Thank you.

03:37PM 8 A "Cummings. We can go to the beach n have fun our -- n

03:38PM 9 have our own fun. Watch the moon reflect on your body."

03:38PM 10 On the top, "Cummings. As we lay n cuddle up together

03:38PM 11 Lol nah jk. What Evers.

03:38PM 12 "Kiana. Cuddles?" Laughing emoji.

03:38PM 13 "Cummings. You burn weed?,"

03:38PM 14 Q Let me stop you here.

03:38PM 15 In your training and experience, are you able to say

03:38PM 16 what he's referring to with weed?

03:38PM 17 A My training and experience for this connotation would be

03:38PM 18 marijuana.

03:38PM 19 Q Thank you.

03:38PM 20 A "Kiana. Yeah but it puts me to" sleeping emoji.

03:38PM 21 "Cummings. I'll have some if you like." Wind blowing

03:38PM 22 emoji.

03:38PM 23 Q If I may stop you again.

03:38PM 24 In your training and experience, in the context of

03:38PM 25 this conversation, what do you think that blowing emoji is?

03:39PM 1 A From my training and experience, that would be a smoking
03:39PM 2 emoji reference to smoking marijuana.

03:39PM 3 Q I'd like to talk a little bit more about your training and
03:39PM 4 experience here going back to how you said you have significant
03:39PM 5 training and experience in child exploitation cases.

03:39PM 6 Why does Mr. Cummings offer her marijuana at this
03:39PM 7 point in your training and experience?

03:39PM 8 A In order to persuade and to coax, and to entice her to
03:39PM 9 gain her favor.

03:39PM 10 Q Is that something that's common in your experience in
03:39PM 11 investigating child exploitation cases?

03:39PM 12 A Yes.

03:39PM 13 Q Can you expand a little bit on that?

03:39PM 14 A I'm sorry. Can you repeat the question?

03:39PM 15 Q Could you expand a little bit on that?

03:39PM 16 A On which part?

03:39PM 17 Q How it's common in child exploitation cases to offer
03:39PM 18 marijuana or other drugs?

03:39PM 19 A That would be something that would be common in that for
03:39PM 20 an adult to offer various drugs to minors in order to gain
03:40PM 21 favor, to groom, to manipulate, to induce, to coax them.

03:40PM 22 Q Thank you.

03:40PM 23 Please continue reading.

03:40PM 24 A "Cummings. So should I come down or you can't come out if
03:40PM 25 I come down?.. Lol why you don't answer?"

03:40PM 1 "Kiana. My girlfriend is over rn. Watchin a movie."

03:40PM 2 Q Let me stop you.

03:40PM 3 So in this point in the conversation DuckFat34 we'll

03:40PM 4 say, has asked you repeatedly to meet in person.

03:40PM 5 Why are you not agreeing at this point to meet in

03:40PM 6 person?

03:40PM 7 A I'm still understanding his intent and still building a

03:40PM 8 rapport with him.

03:40PM 9 Q Thank you.

03:41PM 10 Please continue.

03:41PM 11 A "My girlfriend is over rn. Watchin a movie."

03:41PM 12 "Cummings. Send a pic of you two."

03:41PM 13 "Kiana. You haven't even sent me one pic yet."

03:41PM 14 Q Can I ask you, why did you say that?

03:41PM 15 A Because he hasn't sent me a picture of himself and I've

03:41PM 16 sent two pictures of Kiana.

03:41PM 17 Q Okay.

03:41PM 18 A "Cummings." Then picture of him from his Skout profile.

03:41PM 19 "Cummings. My profile picture.

03:41PM 20 The next image on the top is stacks of \$100 bills.

03:41PM 21 "Cummings. Is your gf going home soon?."

03:41PM 22 "Kiana. I already saw the profile pic." Money

03:42PM 23 emojis. "How can I get one of those stacks?"

03:42PM 24 "Cummings. When you ride with me. Is tonight gonna

03:42PM 25 happen for us or just talk."

03:42PM 1 "Kiana. What you gonna do. We."

03:42PM 2 "Cummings. Come down pick you up go by the beach,

03:42PM 3 listen music talk n hang out for a few hours.

03:42PM 4 "Kiana. So just talk wit you and I get a stack?"

03:42PM 5 "Cummings." Few" hundred emojis. You know you not

03:42PM 6 going, yes or no or we just do tomorrow either Shops of Wailea,

03:42PM 7 outlets in Lahaina or Victoria Secret."

03:42PM 8 "What, I not going." "Kiana. U didn't even send me a

03:43PM 9 pic yet."

03:43PM 10 "Cummings. What pic you like?"

03:43PM 11 "Kiana. Whatever."

03:43PM 12 Q Let me stop you there.

03:43PM 13 Why did you say that, because he did send you a

03:43PM 14 picture? Why did you say you didn't send me one when he

03:43PM 15 already did?

03:43PM 16 A The picture that he had sent was the same one that had

03:43PM 17 been in the Skout profile and the other pictures were just of

03:43PM 18 money. They weren't of what he represented to be him.

03:43PM 19 Q So you were trying to get a picture that was different

03:43PM 20 from the profile picture?

03:43PM 21 A Yes.

03:43PM 22 Q Okay.

03:43PM 23 A "Cummings. You not going come with me.. you just talking

03:43PM 24 like you like go. Lol you want me come get you tonight??

03:43PM 25 "Kiana. Pic of u not from profile."

03:43PM 1 "Cummings. Good night."

03:43PM 2 "Kiana. I not playin games. Why can't you just send

03:44PM 3 a pic.. all is former profile."

03:44PM 4 "Cummings. I know more any."

03:44PM 5 "Kiana. You like see pics of me but you don't have

03:44PM 6 any??" Upside down emoji. Crying emoji.

03:44PM 7 Q Let me stop you here.

03:44PM 8 Could you just note the date and time of the next

03:44PM 9 entry?

03:44PM 10 A Next entry is at 11:01 a.m. the following morning. The

03:44PM 11 last one ended around midnight.

03:44PM 12 Q How many days -- what's the -- in the next entry, how many

03:44PM 13 days have you been chatting already?

03:44PM 14 A From the initial contact on the 13th through 14th at 2:53.

03:44PM 15 Q So this was the beginning of the third day; is that right?

03:44PM 16 A Correct.

03:44PM 17 Q Okay.

03:44PM 18 A "Cummings. Good morning."

03:45PM 19 "Kiana." Waving emoji. Yawning emoji.

03:45PM 20 "Cummings. You still sleeping."

03:45PM 21 Q Let me stop you again so I can ask you a question.

03:45PM 22 Why did you wait for Cummings to reach out to you the

03:45PM 23 next morning? Why didn't you initiate the conversation on

03:45PM 24 March 15th?

03:45PM 25 A Didn't have a specific reason in the morning time. He's

03:45PM 1 the one that just had initiated a conversation.

03:45PM 2 Q Okay. Continue.

03:45PM 3 A "Cummings: You still sleeping."

03:45PM 4 "Kiana. Jus wakin."

03:45PM 5 "Cummings. You have any plans for today??"

03:45PM 6 "Kiana: Dunno yet. Cousin just got back .. she kinda
03:45PM 7 get in irraz already."

03:45PM 8 Q Can I stop you?

03:45PM 9 What does irraz mean? Why does it say that?

03:45PM 10 A Irraz would be slang for irritated.

03:45PM 11 Q Thank you.

03:45PM 12 A "Cummings. Can you get away.. let me take you shops of
03:45PM 13 Wailea couple hours or go by the beach."

03:46PM 14 "Kiana. Dunno yet. She all up in my bizness -- she
03:46PM 15 all up in bizness rn."

03:46PM 16 Page 7 the top, "Cummings. Wanna go hang out
03:46PM 17 .. couple hours. Okay babes lmk."

03:46PM 18 Q What does lmk mean?

03:46PM 19 A My training and experience, that would be let me know.

03:46PM 20 Q Okay.

03:46PM 21 A "Kiana. Brah. So such stupid shit." Angry emoji. "I
03:46PM 22 want to go beach and cousin just fckin watching movies."

03:46PM 23 "Cummings. Well let me come get you n disappear for a
03:46PM 24 few hours. Let's go buy you a..." bikini emoji "...n go
03:46PM 25 beach."

03:46PM 1 "Kiana." Iirrrrrrrraaaaaazzzzzzzzz" scorpion emoji. "I
03:46PM 2 wish."
03:46PM 3 "Cummings. Babes want me come get you."
03:47PM 4 "Kiana. She's cool and all. Like my hanai sister but
03:47PM 5 she's hellla boring."
03:47PM 6 "Cummings. Let's go have our own fun n you can go
03:47PM 7 back be boring later."
03:47PM 8 "Kiana. Can't just skip on obv kine. She's all up in
03:47PM 9 my biz cause she knows what I'm like..lol." Devil emojis.
03:47PM 10 "She's only 17, but she watch ova me more than my moms."
03:47PM 11 "Cummings. We should just go for a little while."
03:47PM 12 "Kiana. Can later prolly."
03:47PM 13 "Cummings. Yeah lmk. Give me at least 30/45 min
03:47PM 14 early so I can get to Kihei. I stay up country."
03:48PM 15 "Kiana. Kk."
03:48PM 16 "Cummings. We can go do what Evers you like n go take
03:48PM 17 you shopping. What you think you want to go do??"
03:48PM 18 The top, "Kiana" page 8. "Why you really want to buy
03:48PM 19 me..." swimming suit emoji and dress emoji. "Just be real.
03:48PM 20 Hate games dat HS boys play."
03:48PM 21 Q What does HS stand for? What were you trying to get at
03:48PM 22 there?
03:48PM 23 A HS would stand for high school.
03:48PM 24 "Cummings. We not playing games .. babes. I'll spoil
03:48PM 25 you if you wanna hang with me. You just be real too. What we

03:48PM 1 going get be between us .. no one need to know where or how you

03:48PM 2 being spoiled --

03:48PM 3 Q Let me stop you here for a second.

03:49PM 4 On that last entry from Cummings, the last message, in

03:49PM 5 your training and experience, why does he say that?

03:49PM 6 A My training and experience, why he's saying "not playing

03:49PM 7 games," meaning that his intentions are real and that he wanted

03:49PM 8 to spoil me and hang with me; that it would just be between us.

03:49PM 9 It would be secretive in nature and nobody else would need to

03:49PM 10 know how she would be getting spoiled and who she would be

03:49PM 11 getting spoiled by.

03:49PM 12 Q In your training and experience, in a child exploitation

03:49PM 13 case, why would he want to keep it secret?

03:49PM 14 A Because he realizes what he is doing is immoral and

03:49PM 15 illegal.

03:49PM 16 Q Why?

03:49PM 17 A And wrong. Because he is an adult and she is 13. Kiana

03:49PM 18 is a 13-year-old and she's -- correct. In the context as well

03:49PM 19 of being spoiled, buying things, providing marijuana would be

03:50PM 20 another coaxing, inducing and grooming of a minor.

03:50PM 21 Q Thank you.

03:50PM 22 A Kiana --

03:50PM 23 THE COURT: Before you continue, Officer, the last

03:50PM 24 entry that you read was not captured by the record. Counsel

03:50PM 25 interrupted you before you finished reading that entry, so you

03:50PM 1 might want to re-read it just so the record is complete.

03:50PM 2 THE WITNESS: Yes, sir.

03:50PM 3 "What we get going be between us. No one need to know

03:50PM 4 where or how you being spoiled m taken cared of."

03:50PM 5 "Kiana. I am being real... dats why I want to know,

03:50PM 6 not anyone else, lol. Jus saying cus I can't jus break out

03:50PM 7 wheneva.. my cousins parents come back tomorrow."

03:50PM 8 "Cummings. Well when ever you can we go do things.

03:50PM 9 I'm down for what Evers you like n when you like go. Look like

03:51PM 10 spring break going go on all month for you. Where you go high

03:51PM 11 school?..?"

03:51PM 12 "Kiana. Hahah right?" Zombie emojis. Just started

03:51PM 13 at Baldwin."

03:51PM 14 Q Why do you say he just started at Baldwin?

03:51PM 15 A Like I just began going to school, started freshman year

03:51PM 16 at Baldwin is a high school.

03:51PM 17 "Cummings. Fuck Baldwin lol. Send me a picture of

03:51PM 18 you laying around bored. Wyd."

03:51PM 19 "Kiana. Fuck Baldwin??.?..? Why dat?"

03:51PM 20 "Cummings. Lol. Maui high is our island school.

03:51PM 21 Babes send me a picture of you laying around being bored."

03:51PM 22 "Kiana. Why that. You havnt even sent me one pic

03:52PM 23 yet."

03:52PM 24 "Cummings," the top page 9, "Send me then I'll send

03:52PM 25 you."

03:52PM 1 "Kiana. I do love the..." money emoji "...pic tho.
03:52PM 2 You send a pic wit peace sign and I'll send u one."
03:52PM 3 Q Let me stop you there.
03:52PM 4 Why do you specifically ask for a peace sign picture?
03:52PM 5 A It's something that he would actually send to know he
03:52PM 6 would be actually real.
03:52PM 7 Q Thank you.
03:52PM 8 A "Cummings: It's not sending the pictures.
03:52PM 9 "Kiana. ?"
03:52PM 10 "Cummings. Trying to send you picture. It won't go
03:52PM 11 thru."
03:52PM 12 "Kiana. Omg." Eye roll emoji."
03:52PM 13 "Cummings." Image of -- purported to be Cummings with
03:53PM 14 two fingers up.
03:53PM 15 Q Let me ask you a question about that.
03:53PM 16 What did you interpret those two fingers to be in the
03:53PM 17 context of this conversation?
03:53PM 18 A Peace sign.
03:53PM 19 Q Thanks.
03:53PM 20 A "Kiana." Smiley face. "K.. hold on."
03:53PM 21 "Cummings. Send me a picture of you laying in your
03:53PM 22 booty shorts bored."
03:53PM 23 "Kiana." An image of Maui Police Department Officer
03:53PM 24 Ariga with two fingers raised in a peace sign."
03:53PM 25 Page 10. "Cummings. Still bored."

03:53PM 1 "Kiana. Omg I not wearing booty shorts. Yeah just
03:53PM 2 chilling with cousin and her gf."
03:53PM 3 "Cummings. Show me what you got on. Your cousin is a
03:53PM 4 guy or girl??"
03:53PM 5 "Kiana. Omg. Brah why you being pushy wit da pics?"
03:54PM 6 "Kiana. Girl."
03:54PM 7 "Cummings. Well you no let me see -- let me come see
03:54PM 8 you. Sorry."
03:54PM 9 "Kiana. I cannot help rn." Eye rolling emoji.
03:54PM 10 Q What does rn stand for?
03:54PM 11 A Right now.
03:54PM 12 "Cummings. You can by sending me pic." Laughing
03:54PM 13 emoji.
03:54PM 14 "Kiana. Eye rolling emojis. "Lol. Wyd?"
03:54PM 15 "Cummings. Nothing watching TV n" wind emojis.
03:54PM 16 "Kiana. Cool. So how you makin all dat" money
03:54PM 17 emojis.
03:54PM 18 "Cummings. Work Monday through Friday single, no
03:54PM 19 bills."
03:54PM 20 "Kiana. Lol. You look flashy tho.. hustlin."
03:55PM 21 Champagne emoji, plane emoji, diamond emoji. "Lol. I like
03:55PM 22 that."
03:55PM 23 Page 11 the top. "Cummings. Just came back from
03:55PM 24 Vegas."
03:55PM 25 "Kiana. Brah I want to go so bad. Nevah been."

03:55PM 1 "Cummings. I'm ready for go back. I stay on the
03:55PM 2 Vegas strip. Planet Hollywood has its own mall in it."
03:55PM 3 "Kiana." Hand raising emojis and airplane emojis.
03:55PM 4 "Cummings. Lol you can't even cruise couple hours yet
03:55PM 5 you like go Vegas."
03:55PM 6 "Kiana. Lol. I can l8er on when cousin goes to her
03:55PM 7 BF's place. We going down beach now."
03:55PM 8 "Cummings. Okay."
03:56PM 9 "Kiana. How old you nyway?"
03:56PM 10 "Cummings. 31."
03:56PM 11 "Kiana. Cool."
03:56PM 12 "Cummings. You okay with it."
03:56PM 13 "Kiana. Yeah. I like older guys duh.." eye rolling
03:56PM 14 emoji, laughing emoji. "U okay wit me being 13?"
03:56PM 15 Q Let me ask a question here.
03:56PM 16 Why did you ask that?
03:56PM 17 A He had told me his age. I reaffirmed my age as well so he
03:56PM 18 understood my age as being 13, reiterated that point.
03:56PM 19 Q Thank you.
03:56PM 20 A "Cummings. Ok.. so long your okay with me."
03:56PM 21 "Kiana. Yeah yeah. So what you looking 4 do wit me
03:56PM 22 bein 13? I can't go bars."
03:56PM 23 Q Let me stop you there.
03:56PM 24 Why did you say that?
03:56PM 25 A Looking for understanding what his intentions were to do

03:56PM 1 with a 13-year-old.

03:57PM 2 Page 12 at the top. "Cummings. Walk around the shops

03:57PM 3 Wailea holding your hand ... taking you to the beach n sleeping

03:57PM 4 under the stars waking up to you .. renting hotel rooms during

03:57PM 5 the weekends spoiling you .. late nights watching movies .. and

03:57PM 6 what ever you like do." Message is repeated.

03:57PM 7 "What you want me to do with you.?. " The message is

03:57PM 8 repeated from earlier.

03:57PM 9 "Kiana. --

03:57PM 10 Q I'm sorry. Excuse me.

03:57PM 11 A Sure.

03:57PM 12 Q If I could stop you there.

03:57PM 13 In your training and experience, why is DuckFat34

03:57PM 14 saying that last entry there?

03:57PM 15 A Regarding the walking around Shops of Wailea holding your
03:58PM 16 hand?

03:58PM 17 Q Yes.

03:58PM 18 A At that point he is, with a combination of pictures of
03:58PM 19 money, offering marijuana, going to the Shops of Wailea, which
03:58PM 20 is a high-end shopping mall in Wailea; Gucci, Tiffany, Prada,
03:58PM 21 those brands, taking me to hotel rooms, from my training and
03:58PM 22 experience, that is inducing, coaxing or grooming Kiana towards
03:58PM 23 having sexual acts.

03:58PM 24 Q Thank you. Please continue.

03:58PM 25 A "Kiana. So you want to like be my BF? Keep it in the

03:58PM 1 friend zone?"

03:58PM 2 Q Let me ask you, what does BF stand for?

03:58PM 3 A Boyfriend.

03:58PM 4 "Cummins. What you want??" The message is repeated
03:58PM 5 twice.

03:58PM 6 Q Again, do you know why some of these messages are just
03:58PM 7 repeated on here?

03:58PM 8 A I don't. They were sent to me. This is how it was sent.

03:59PM 9 "So I don't expect to much or do to much n disrespect
03:59PM 10 you."

03:59PM 11 "Kiana. I like have fun and like guys who keep it
03:59PM 12 100. Sry."

03:59PM 13 "Cummins. For sure we going have fun" blushing
03:59PM 14 emoji.

03:59PM 15 "Kiana. Sry but can't be having a 3lyo full time bf."

03:59PM 16 "Cummins. Hopefully we can. Start from tonight."

03:59PM 17 Page 13 top, "Kiana. Sry my phone glitching up."

03:59PM 18 "Cummins. On the down low can. You still down the
03:59PM 19 beach."

03:59PM 20 "Kiana. What you want to do for fun then? We walkin
03:59PM 21 back up.

03:59PM 22 "Cummins. Eat your pussy." The message is repeated.

04:00PM 23 "Send me a picture of you n the sunset.

04:00PM 24 Q Let me stop you here.

04:00PM 25 Why do you think Cummins says those entries at this

04:00PM 1 point in the conversation in your training and experience?

04:00PM 2 A He had been building up with sending pictures of money,

04:00PM 3 marijuana -- offering marijuana, take me shopping, then once

04:00PM 4 again inducing and grooming me to the point of now breaking

04:00PM 5 down my natural boundaries of Kiana and now wanting to have

04:00PM 6 sexual contact with her.

04:00PM 7 Q When you say "me," you mean --

04:00PM 8 A Kiana.

04:00PM 9 Q Kiana.

04:00PM 10 A Right.

04:00PM 11 Q Okay. Please continue.

04:00PM 12 A "Kiana. We walkin back to her house already. Kiana. U

04:00PM 13 good at that?" Tongue emoji, blushing emoji.

04:00PM 14 "Cummins. You didn't take a picture down by the

04:01PM 15 beach. Wyd."

04:01PM 16 "Kiana. K. Hold on."

04:01PM 17 "Cummins. You gonna find out" laughing emoji.

04:01PM 18 Message is repeated twice.

04:01PM 19 Q Let me just stop you.

04:01PM 20 When you said "U good at that" and there's the two

04:01PM 21 emojis, what did you mean by that?

04:01PM 22 A "U good at that" regarding his message "Eat your pussy."

04:01PM 23 Q Okay.

04:01PM 24 A "You gonna find out."

04:01PM 25 Kiana, next down, blushing emoji, upside down face

04:01PM 1 emoji, "I like that."

04:01PM 2 "Cummins. Let gonna let me shave you first."

04:01PM 3 "Kiana. Lol. Don't get much hair anyway. Haha."

04:01PM 4 Q Question, what kind of hair are you talking about there?

04:01PM 5 A Pubic hair.

04:01PM 6 Q Thanks.

04:01PM 7 A "Cummins. You going let me -- you going to let me."

04:01PM 8 "Kiana. Hapa Japanese."

04:02PM 9 "Cummins. Any guy eat you yet?"

04:02PM 10 "Kiana. My ex bf tried. He was horrors tho," eye

04:02PM 11 rolling emoji.

04:02PM 12 "Cummins. I'm gonna eat you till you cum a few times

04:02PM 13 on my face babes. Get your pussy so wet."

04:02PM 14 "Kiana. Lol make it rain?" Water splashing emojis.

04:02PM 15 "Kiana. Lol.

04:02PM 16 "Cummins. Have you slowly sat on me taking me in you

04:02PM 17 slowly. You must be so tight you going to squirt when I make

04:02PM 18 you cum. Can't see with the light in the back."

04:02PM 19 "Kiana" blank emoji -- blank message. "Lol. Just

04:02PM 20 with my exbf. He wasn't dat big." Eggplant emoji, eye rolling

04:02PM 21 emoji.

04:03PM 22 "Cummins. Your cousin going to leave soon?.. I'm

04:03PM 23 going to head down.

04:03PM 24 "Kiana. Can you make it rain..." money emojis "...all

04:03PM 25 over my body? Lol."

04:03PM 1 "Cummings. Jump in the shower I'm gonna head down
04:03PM 2 pick you up .. take a few pic in the shower for me." Hands
04:03PM 3 praying emoji, blushing emoji, kissing emoji.
04:03PM 4 Page 15 the top. "Cummings. Yes I'll bring you some
04:03PM 5 for -- I'll bring some for you tonight."
04:03PM 6 "Kiana" blushing emojis.
04:03PM 7 "Cummings. Or make a video. You be ready by 7:45??"
04:03PM 8 "Kiana. My cousin still home.. I gotta make n excuse
04:03PM 9 to leave. We stay off Kilohana."
04:03PM 10 Q Question here. Is this the first time you give him a
04:04PM 11 location?
04:04PM 12 A Yes.
04:04PM 13 Q Why do you give him this location?
04:04PM 14 A That would be the area that was going to be predetermined
04:04PM 15 by law enforcement officers to meet up with DuckFat, Lyle
04:04PM 16 Cummings, in the situation.
04:04PM 17 "Cummings. You gotta run store get pads lol. By the
04:04PM 18 fire station."
04:04PM 19 "Kiana." Laughing emoji. "Yeah jus down from there.
04:04PM 20 U got condoms? I can meet u Kilohana Park."
04:04PM 21 "Cummings: Ok 7:45??"
04:04PM 22 "Kiana. Yah, can."
04:04PM 23 "Cummings. Okay see you soon."
04:04PM 24 "Kiana. Kk."
04:04PM 25 "Cummings. You gonna shower n take me a picture or

04:04PM 1 video."

04:04PM 2 "Kiana. I stay tryin to get away from my cousin."

04:05PM 3 Page 16 the top. "Kiana." Picture of UC Ariga with

04:05PM 4 pink glasses. "I gonna leave now... where you stay."

04:05PM 5 "Cummings. Coming. Almost passing Puunene."

04:05PM 6 Q What's that word there?

04:05PM 7 A Puunene is an area on Maui, central Maui.

04:05PM 8 "Kiana. Ok."

04:05PM 9 "Cummings. I like that last picture .. wish you

04:05PM 10 wouldn't cover your beautiful face are you wearing that

04:05PM 11 tonight?"

04:05PM 12 "Kiana. Lol. ty... kinda self conscious bout my

04:05PM 13 skin.."

04:05PM 14 Q What does ty mean?

04:05PM 15 A Thank you.

04:05PM 16 "No. Wearing pink hoodie."

04:05PM 17 "Cummings. Ok no panties?"

04:06PM 18 "Kiana. Hahahha. I get thong" smiley.

04:06PM 19 "Kiana. There's a weirdo at the dog park... I'mm

04:06PM 20 walk down Kilohana to the parking lot across Sidewalks."

04:06PM 21 Q Let me stop you there.

04:06PM 22 What's Sidewalks?

04:06PM 23 A Sidewalks is an area near the entrance of Keawakapu Beach

04:06PM 24 Park, or Keawakapu Beach.

04:06PM 25 Q Why did you change or be more specific about the location

04:06PM 1 at this time?

04:06PM 2 A For logistical or strategical purposes, the officers

04:06PM 3 decided to change the location down the road shortly to the

04:06PM 4 area of the Kilohana parking lot near the area of South Kihei

04:06PM 5 Road.

04:06PM 6 "Cummings. Ok.

04:06PM 7 "Kiana. What kinda car u got?"

04:06PM 8 "Cummings: Toy truck."

04:06PM 9 "Kiana. Ok. U wanna walk over to the beach?"

04:06PM 10 "Cummings. Let's go drive to a spot by the beach."

04:07PM 11 "Kiana. Ok, you don't want to cruise Keawakapu?"

04:07PM 12 "Cummings. The gate not going close."

04:07PM 13 "Kiana. Oh. I dunno. Ok den. Yeah, think it gonna

04:07PM 14 close. Can park on the street tho."

04:07PM 15 "Cummings. Just getting into Kihei."

04:07PM 16 "Kiana. Ok. I stay by entrance to Sidewalks. We can

04:07PM 17 walk down beach from there."

04:07PM 18 "Cummings. I no like leave my truck there."

04:07PM 19 "Kiana. Can park on the street. We can just cruise

04:07PM 20 beach for a little bit. What color your truck? Did you just

04:07PM 21 pass me?"

04:07PM 22 "Cummings. Where you. Come jump in. Hurry up."

04:07PM 23 "Kiana. Come here."

04:07PM 24 Page 18. "Cummings. Cross the street now."

04:08PM 25 Then "Kiana," test messages repeated multiple times.

04:08PM 1 Q What's the significance of those last messages saying
04:08PM 2 "test," "test"?

04:08PM 3 A At that point I was informed by surveillance officers and
04:08PM 4 other officers during the investigation that Mr. Cummings had
04:08PM 5 arrived at the spot, the area of Kilohana, South Kihei Road,
04:08PM 6 and he was arrested at that point. The test text messages were
04:08PM 7 sent by me in order to confirm his mobile device that he was
04:08PM 8 using to send the text messages.

04:08PM 9 Q Is that a common practice in these type of operations?

04:08PM 10 A Yes, ma'am.

04:08PM 11 Q I'm sorry. What's the purpose of it again?

04:08PM 12 A In order to confirm and locate that phone that he was
04:08PM 13 using to communicate with me during this -- our chats.

04:08PM 14 Q And is this the end of your exchange of messages with
04:09PM 15 DuckFat34?

04:09PM 16 A Yes, ma'am.

04:09PM 17 Q Are you aware of -- let me ask it this way: In the --

04:09PM 18 THE COURT: Before you ask the next question, would
04:09PM 19 you please retrieve Exhibit 4, copies that have been
04:09PM 20 distributed to the jurors? Once that has been completed, you
04:09PM 21 may continue your examination.

04:09PM 22 MS. OLSON: Let the record reflect the handout of
04:10PM 23 Exhibit 4 has been collected from the jury.

04:10PM 24 THE COURT: Thank you.

04:10PM 25 BY MS. OLSON:

04:10PM 1 Q Just a couple more final questions.

04:10PM 2 When you were exchanging messages with, say, DuckFat34

04:10PM 3 on Skout, what type of device or electronics were you using?

04:10PM 4 A I was using an iPad.

04:10PM 5 Q And how about for the text messaging?

04:10PM 6 A I was using a cellphone platform often used on the

04:10PM 7 computer.

04:10PM 8 Q And towards the end of this text message conversation or

04:10PM 9 thereafter, were you communicating with someone else?

04:10PM 10 A No.

04:10PM 11 I'm sorry. What was that?

04:10PM 12 Q Were you communicating with someone else?

04:10PM 13 A During -- can you repeat the whole question?

04:10PM 14 Q Sure. Sorry.

04:10PM 15 Towards the end of this conversation, were you

04:10PM 16 communicating with your fellow law enforcement officers?

04:11PM 17 A Yes.

04:11PM 18 Q Could you describe that?

04:11PM 19 A During the time when we were on these operations, we were

04:11PM 20 in a room where the communication amongst the surveillance

04:11PM 21 officers, amongst the arrest officers --

04:11PM 22 THE COURT REPORTER: You're going to need to slow

04:11PM 23 down.

04:11PM 24 THE WITNESS: Sorry. Apologize.

04:11PM 25 During these operations we are in a large classroom,

04:11PM 1 if you will, at the Maui Police Department Kihei station where
04:11PM 2 we communicate with the surveillance officers and the arrest
04:11PM 3 team, and all marry together to -- work together to arrest --
04:11PM 4 in this case arrest, make the arrest.

04:11PM 5 Q Were you -- okay. I think that's clear.

04:11PM 6 MS. OLSON: I have no more questions at this time.

04:11PM 7 Thank you very much, Detective Surina.

04:12PM 8 THE COURT: Mr. Mottl, cross-examination when you're
04:12PM 9 ready.

04:12PM 10 MR. MOTTL: Your Honor, there's a fair amount to
04:12PM 11 digest here. Is the Court planning to adjourn at 4:30? I can
04:12PM 12 start. I would rather just continue through in a single -- so
04:12PM 13 could we adjourn for the day?

04:12PM 14 THE COURT: No.

04:12PM 15 MR. MOTTL: Otherwise, if the Court wants to make use
04:12PM 16 of the time, I can proceed.

04:12PM 17 THE COURT: I wouldn't be asking you to proceed if I
04:12PM 18 didn't want to use the time. We've got 20 more minutes. Let's
04:12PM 19 go.

04:12PM 20 MR. MOTTL: That's true. Okay. Thank you.

04:12PM 21 CROSS-EXAMINATION

04:12PM 22 BY MR. MOTTL:

04:12PM 23 Q Good afternoon.

04:12PM 24 A Good afternoon.

04:12PM 25 Q Is it sergeant or --

04:12PM 1 A Yes, sir.

04:12PM 2 Q Sergeant.

04:13PM 3 Sergeant, you mentioned that you underwent training,
04:13PM 4 different kinds of training during your time as a police
04:13PM 5 officer. Now you spoke -- referred to Washington; is that
04:13PM 6 correct? Washington state, correct?

04:13PM 7 A Washington State Patrol Missing and Exploited Children
04:13PM 8 Task Force.

04:13PM 9 Q And was that just for training or was that before you
04:13PM 10 began your time at Maui Police Department?

04:13PM 11 A That was during my time at the police department when I
04:13PM 12 was a detective in the Criminal Investigation Division.

04:13PM 13 Q So you basically receive an education or undergo training
04:13PM 14 in that particular area?

04:13PM 15 A No, sir. I received mentoring and training from the
04:13PM 16 Washington State Patrol when they first assisted with
04:14PM 17 implementation of the Operation Keiki Shield, as well as when I
04:14PM 18 worked as a chatter with the Washington State Patrol in one of
04:14PM 19 their operations that are nicknamed for the Washington state
04:14PM 20 called Net Nanny.

04:14PM 21 Q So you worked there and then you applied -- a position
04:14PM 22 opened at the Maui Police Department and you --

04:14PM 23 A No, sir. This was in 2019.

04:14PM 24 Q Was the operation in Washington similar to Operation Keiki
04:14PM 25 Shield?

04:14PM 1 A The Operation Keiki Shield was modeled after Operation Net
04:14PM 2 Nanny, which is one of the most successful child enticement
04:14PM 3 operations in the nation, and they teach classes at the Crimes
04:14PM 4 Against Children Conference.

04:14PM 5 THE COURT REPORTER: Okay. You need to slow down.

04:14PM 6 THE WITNESS: I apologize. I'm sorry. I was on a
04:14PM 7 roll. I'm sorry.

04:14PM 8 Operation Keiki Shield was modeled after Operation Net
04:14PM 9 Nanny, which is one of the most successful child enticement
04:15PM 10 operations conducted in the nation.

04:15PM 11 The officers from the Washington State Patrol often
04:15PM 12 teach at the Crimes Against Children Conferences that are held
04:15PM 13 yearly.

04:15PM 14 Q Thank you.

04:15PM 15 Now, was the operation successful when you -- most
04:15PM 16 successful -- a very successful one in this country, similar to
04:15PM 17 the operation here structurally?

04:15PM 18 A Yes, sir.

04:15PM 19 Q And this is a -- you have the Maui Police Department,
04:15PM 20 correct, and then there were individuals from the Public Safety
04:15PM 21 Investigations Division?

04:15PM 22 A From the -- correct, from the attorney general's office,
04:15PM 23 as well as various federal partners.

04:15PM 24 Q Attorney general of the United States, correct?

04:15PM 25 A Yes, from the State of Hawaii.

04:15PM 1 Q You mentioned there was state participation also? And I'm
04:16PM 2 talking about Maui, Operation Keiki Shield.

04:16PM 3 A Yes. We hosted the operation under the Hawaii Internet
04:16PM 4 Crimes Against Children Task Force, which is the attorney
04:16PM 5 general's office.

04:16PM 6 Q Now, the task force, Hawaii task force to protect children
04:16PM 7 from various types of crimes, was that exclusively over the
04:16PM 8 internet or internet crime?

04:16PM 9 A Hawaii internet is part of it. Yeah, that's the online
04:16PM 10 part of it.

04:16PM 11 Q You speak very quickly, and I don't always pick things up.
04:16PM 12 Thank you.

04:16PM 13 Was the focus primarily on having a chatter both at
04:16PM 14 the Hawaii program and the program on the mainland in
04:17PM 15 Washington that you attended?

04:17PM 16 A Yes. During enticement operations, both use chatters.

04:17PM 17 Q Did you receive chat training or chatter training in
04:17PM 18 regard to what you refer to, grooming?

04:17PM 19 A It was one of the subjects that I believe were covered
04:17PM 20 during the FBI Online Covert Employee Course.

04:17PM 21 Q And grooming is a, I wouldn't call it a technique, but
04:17PM 22 something that's used by predators in regard to how they
04:17PM 23 approach children and what they do to gain their confidence,
04:17PM 24 children's confidence, and to draw them into whatever the
04:17PM 25 devious goals of the predator are; isn't that correct?

04:17PM 1 A Yes, in general.

04:17PM 2 Q You mentioned at one point, well, I think a couple of

04:18PM 3 points, that there were pieces of what you described as

04:18PM 4 characteristics of some kind of a grooming in this

04:18PM 5 conversation. One, utilization of essentially money

04:18PM 6 inducement, material items.

04:18PM 7 Is that one of them?

04:18PM 8 A Yes, sir.

04:18PM 9 Q Can you name some other ones?

04:18PM 10 A Sure. The providing of marijuana to Kiana, 13-year-old,

04:18PM 11 as well as taking her to high-end shopping malls such as the

04:18PM 12 Shops of Wailea, taking her to Victoria's Secrets, which is

04:18PM 13 known for their lingerie, as well as taking her to hotel rooms

04:18PM 14 and paying for the hotel rooms for her.

04:18PM 15 Q Now, it's true, is it not, that those things you describe

04:18PM 16 and although marijuana -- the federal law is certainly a

04:19PM 17 serious offense, Hawaii not so serious, but nevertheless we

04:19PM 18 still have -- it's not been legalized here across the board,

04:19PM 19 but each one of these things you mentioned could be something

04:19PM 20 that maybe a normal individual in our society, or maybe not so

04:19PM 21 normal, so it's hard and I don't know how to describe it, the

04:19PM 22 average person appealing to someone who they may be interested

04:19PM 23 in engaging with socially, sexually or otherwise regardless of

04:19PM 24 whether they have devious goals in mind. We're talking about I

04:20PM 25 mean your organization and your operation was concerned with

04:20PM 1 protecting children, and that's certainly important, and it is
04:20PM 2 a problem online and otherwise too. Before the internet,
04:20PM 3 children were approached on streets or as most often the case,
04:20PM 4 it's actually a family member that may be a predator on a
04:20PM 5 child, but those inducements --

04:20PM 6 THE COURT: Do you have a question, Counsel?

04:20PM 7 MR. MOTT: Yes.

04:20PM 8 THE COURT: Ask it.

04:20PM 9 BY MR. MOTT:

04:20PM 10 Q Yes. The inducements that you mentioned could be things
04:20PM 11 that a guy off the street who is 25, 30 may use to try and gain
04:20PM 12 the favor of a woman of the same age bracket, right? So
04:20PM 13 offering to take someone shopping, going off and enjoying maybe
04:21PM 14 not marijuana, although these days -- I was shocked when I was
04:21PM 15 growing up, I never saw anything like that, but I'm appalled,
04:21PM 16 and my kids see it all the time, I imagine it's hard to
04:21PM 17 avoid --

04:21PM 18 MS. OLSON: Objection.

04:21PM 19 THE COURT: Do you have a question?

04:21PM 20 MR. MOTT: Yes.

04:21PM 21 THE COURT: Ask the question.

04:21PM 22 BY MR. MOTT:

04:21PM 23 Q Marijuana. So even marijuana, it's probably used by a
04:21PM 24 whole a lot of adults at one time or another in their life and
04:21PM 25 it's a -- you think it's unusual for someone to offer marijuana

04:21PM 1 to another adult, you want to take a drag or whatever. I mean

04:21PM 2 going back a long ways. I was around in the '60s, so --

04:21PM 3 MS. OLSON: Objection.

04:21PM 4 BY MR. MOTTL:

04:21PM 5 Q But --

04:21PM 6 MS. OLSON: Counsel is testifying and compound

04:21PM 7 question.

04:21PM 8 THE COURT: Sustained.

04:21PM 9 MR. MOTTL: I'll withdraw the question.

04:21PM 10 THE COURT: You never asked a question.

04:21PM 11 BY MR. MOTTL:

04:21PM 12 Q But unusual -- to smoke, whether it's tobacco or

04:22PM 13 marijuana?

04:22PM 14 A It all depends on context.

04:22PM 15 Q The context.

04:22PM 16 A Correct.

04:22PM 17 Q In this particular context, you understandably, given your

04:22PM 18 training, assume actually -- well, had you assumed halfway

04:22PM 19 through this conversation that in fact you were talking to

04:22PM 20 someone who believed that he was talking to a minor or

04:22PM 21 communicating with a minor?

04:22PM 22 MS. OLSON: Objection. Confusing. Compound.

04:22PM 23 MR. MOTTL: I'll repeat it or I'll --

04:22PM 24 THE COURT: Detective, do you understand the question?

04:22PM 25 THE WITNESS: No, sir.

04:22PM 1 THE COURT: Try again, Mr. Mottl.

04:22PM 2 BY MR. MOTTl:

04:22PM 3 Q You were looking for predators, correct?

04:22PM 4 A We were looking for people that would want to commit sex
04:22PM 5 crimes against minors, yes.

04:22PM 6 Q Correct.

04:23PM 7 During your testimony on direct, at certain points you
04:23PM 8 mentioned that, in response to a question from the prosecutor,
04:23PM 9 why did you ask that question, and your response was, well, you
04:23PM 10 were trying to see how they would respond. And several of
04:23PM 11 those responses by you to the question, to see if it fit with
04:23PM 12 your assessment of the individual as being a predator, someone
04:23PM 13 dangerous, or a person that may have believed the initial
04:23PM 14 representation that this person that you were acting as was a
04:23PM 15 35-year-old rather than a 13 or a 14-year-old. Could have gone
04:23PM 16 either way, correct?

04:23PM 17 A I'm sorry. I apologize, sir. I didn't understand your
04:24PM 18 question.

04:24PM 19 Q I'm sorry. Okay.

04:24PM 20 At what point in time were you convinced that this
04:24PM 21 person was someone who believed or knew they were talking to a
04:24PM 22 13 or 14-year-old as opposed to a 35-year-old?

04:24PM 23 A When I informed them multiple times of my age, being 13.

04:24PM 24 Q I'll start again. I'll proceed on another line.

04:25PM 25 Your response to the question relating to why Skout

04:25PM 1 was selected, your response related to that Skout had had
04:25PM 2 problems with predators previously; is that right?

04:25PM 3 A From my training and experience and use, that there are
04:25PM 4 persons who use Skout to perpetuate sex crimes against
04:25PM 5 children.

04:25PM 6 Q Were you ever informed that there was a history of a
04:25PM 7 problem that resulted in someone that was injured, I believe,
04:25PM 8 who had used Skout, a minor who had basically started using the
04:25PM 9 site, and there was a large lawsuit over it.

04:25PM 10 Do you know anything about that? Was that --

04:25PM 11 MS. OLSON: Objection.

04:25PM 12 BY MR. MOTTL:

04:25PM 13 Q Was that ever --

04:25PM 14 MS. OLSON: Not relevant.

04:26PM 15 THE COURT: Overruled.

04:26PM 16 MR. MOTTL: Okay.

04:26PM 17 THE COURT: Overruled.

04:26PM 18 THE WITNESS: No, I'm not aware.

04:26PM 19 BY MR. MOTTL:

04:26PM 20 Q To your knowledge, are there sites that are devoted to
04:26PM 21 facilitating communication among minors, people under 18,
04:26PM 22 teenagers, younger teenagers, social sites like this?

04:26PM 23 A There are social sites that are designed around the use
04:26PM 24 for kids, mostly for learning purposes, sure.

04:26PM 25 Q And Skout basically at least gives at least a minimal

04:26PM 1 effort to try and screen out minors from using the program,
04:26PM 2 because there's a -- one of the first things that's mentioned
04:27PM 3 in the contract or the agreement is that we don't want anyone
04:27PM 4 under the age of 18 participating, this is for adults; isn't
04:27PM 5 that correct?

04:27PM 6 A Yes, sir.

04:27PM 7 Q Now, the possibility of engaging someone who is a predator
04:27PM 8 using Skout, presenting themselves as an adult and seeking to
04:27PM 9 establish a contact with a minor is proceeding on a path that's
04:27PM 10 not likely to give them any favorable results; isn't that the
04:28PM 11 case?

04:28PM 12 A I'm sorry. I missed the last part of your question.

04:28PM 13 Q Since Skout essentially tries to prohibit minors from
04:28PM 14 participating in the program, Skout, which tries to keep the
04:28PM 15 younger folks out, removes them if there's a -- I won't
04:28PM 16 continue with that.

04:28PM 17 They don't want younger people there and they --
04:28PM 18 essentially they kick them off if they have an underage
04:28PM 19 designation for age. That pool of people who are, like
04:28PM 20 Mr. Cummings, who are interested in pursuing social inaction
04:28PM 21 with people are using a site that's for adults, and they have
04:28PM 22 rules to at least try to ensure that there are only adults
04:29PM 23 using it, correct?

04:29PM 24 A Yes.

04:29PM 25 Q So it makes sense, would it not, to assume that most of

04:29PM 1 the people there are interested in adult men or women depending
04:29PM 2 on what your sexual preference is?

04:29PM 3 MS. OLSON: Objection, calling for too much
04:29PM 4 speculation.

04:29PM 5 THE COURT: Sustained.

04:29PM 6 BY MR. MOTT:

04:29PM 7 Q Detective, you mentioned that there are sites that are
04:29PM 8 exclusively for children that are designed for minors to use,
04:29PM 9 correct?

04:29PM 10 A I believe so.

04:29PM 11 Q Now, a predator who is interested in establishing contact
04:29PM 12 with a minor, assuming he has a goal of seriously trying to
04:29PM 13 establish contact, would probably be found probably around
04:30PM 14 those sites in trying to figure out who he could make contact
04:30PM 15 with at a children's site rather than one that essentially
04:30PM 16 tries to screen out children and essentially caters to adults.
04:30PM 17 That was just a feeding ground for a predator, is it not?

04:30PM 18 A Not necessarily.

04:30PM 19 Q Were you taught that in training?

04:30PM 20 A Was I taught what?

04:30PM 21 Q Were you --

04:30PM 22 A That predators only go to --

04:30PM 23 Q Adult --

04:30PM 24 A -- sites that --

04:30PM 25 Q Go ahead, sergeant.

04:30PM 1 A Sorry. What was your question?

04:30PM 2 Q Question is, was it part of your training to engage your
04:30PM 3 skills as a chatter by placing your profiles in adult sites
04:31PM 4 that try to exclude minors as opposed to one that involves --
04:31PM 5 one that caters to children?

04:31PM 6 A Yes, sir.

04:31PM 7 Q That was part of your training?

04:31PM 8 A That we would use sites that children would go to and they
04:31PM 9 would be exploited on, yes.

04:31PM 10 Q And that would be a Skout type?

04:31PM 11 A As one of various other ones, yes.

04:31PM 12 Q As opposed to a children's site or one that caters to
04:31PM 13 minors?

04:31PM 14 A Yes, sir.

04:31PM 15 Q And this is the program set up by this national award
04:31PM 16 winning or -- yeah, award winning program that you received
04:32PM 17 your training from?

04:32PM 18 A Yes.

04:32PM 19 Q I'm going to -- if I could repeat it. So you were trained
04:32PM 20 to essentially utilize sites like Skout that essentially
04:32PM 21 refuses to accept minors within its program applications, they
04:32PM 22 keep them out; that is a better site to pursue predators than
04:32PM 23 one relating to minors? Is that your response and this is what
04:32PM 24 you were trained in this program?

04:32PM 25 A Yeah, I can't think of which programs or sites that you're

04:33PM 1 referring to specifically that are just exclusive to minors, so
04:33PM 2 it's hard for me to compare what you're talking about.

04:33PM 3 Q Well, I guess, and maybe it was not clear, I have a list
04:33PM 4 here, but I don't know secondhand information, ones that are
04:33PM 5 designed and cater to minors, but those sites were the ones you
04:33PM 6 were not trained to focus on as opposed to the ones that are
04:33PM 7 exclusively adults.

04:33PM 8 A Correct, as most times that young adults, kids that are in
04:33PM 9 their teenage years, want to enjoy hanging out with people that
04:33PM 10 are older than them.

04:33PM 11 Q Undoubtedly there are and that's why they have -- I gather
04:33PM 12 that's why Skout has these efforts at screening.

04:34PM 13 At the same time I know there was a -- there were
04:34PM 14 other cases that you were working on on Maui in the Kihei area
04:34PM 15 also?

04:34PM 16 THE COURT: Mr. Mottl, it sounds like you might be
04:34PM 17 shifting gears a bit in your questioning, and I wonder if this
04:34PM 18 would be an appropriate time to adjourn for the day. We are
04:34PM 19 now at 4:35.

04:34PM 20 MR. MOTTL: Thank you, Your Honor. Yes, it would be.

04:34PM 21 THE COURT: Let's go to break, then, for the day.
04:34PM 22 We'll recess until tomorrow at 2:00.

04:34PM 23 As we go to break, I'll remind our jurors, as you will
04:34PM 24 hear me repeatedly say, to refrain from discussing the
04:34PM 25 substance of this case with anyone, including one another,

04:34PM 1 until I advise otherwise; to refrain from accessing any media
04:34PM 2 or other accounts of this case that may be out there; and
04:34PM 3 finally, please do not conduct any independent investigation
04:34PM 4 into the facts, circumstances or persons involved.

04:34PM 5 We will see you back here at 2:00 for day three.

04:34PM 6 (At 4:34 p.m., the jury was excused, and the following
04:34PM 7 proceedings were held:)

04:35PM 8 THE COURT: The record should reflect the departure of
04:35PM 9 all 14 jurors, but the remaining presence of counsel for both
04:36PM 10 sides, and their clients and client representatives.

04:36PM 11 Any issue that you need to take up with me before we
04:36PM 12 adjourn?

04:36PM 13 MS. OLSON: No. Thank you, Your Honor.

04:36PM 14 THE COURT: Mr. Mottl?

04:36PM 15 MR. MOTTL: No, Your Honor.

04:36PM 16 THE COURT: All right. We'll see you back here
04:36PM 17 tomorrow at 2:00.

04:36PM 18 (Proceedings were concluded at 4:36 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 9, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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25

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 vs.)
7 LYLE RIKIO CUMMINGS,)
8 Defendant.)
 _____)

9
10 TRANSCRIPT OF JURY TRIAL (DAY 3)
11 BEFORE THE HONORABLE DERRICK K. WATSON,
12 CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

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22 300 Ala Moana Boulevard
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23

24

25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

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1 June 9, 2023 2:06 p.m.

02:06PM 2 THE CLERK: Criminal Number 22-00023-DKW, United

02:06PM 3 States of America versus Defendant (01) Lyle Rikio Cummings.

02:06PM 4 This case has been called for jury trial, day three.

02:06PM 5 Counsel, please make your appearances for the record.

02:06PM 6 MS. OLSON: Good afternoon, Your Honor. AUSA

02:06PM 7 Christine Olson, AUSA Rebecca Perlmutter for the United States,

02:07PM 8 and we also have here at counsel table paralegal Rae Ann Unten,

02:07PM 9 and behind us we have HSI Special Agent Murray Acosta.

02:07PM 10 THE COURT: All right. Good afternoon to all of you.

02:07PM 11 MR. MOTTl: Judge Watson, good afternoon. Joseph

02:07PM 12 Mottl, attorney for Lyle Cummings. Mr. Cummings is present.

02:07PM 13 THE COURT: Good afternoon to both of you as well.

02:07PM 14 You may be seated.

02:07PM 15 Good afternoon to the 14 persons on our jury. I'll

02:07PM 16 reorient you briefly.

02:07PM 17 When we adjourned yesterday afternoon, Detective

02:07PM 18 Surina, I think we referred to him as officer, sergeant and

02:07PM 19 detective variously, but I'll call him Detective Surina. He

02:07PM 20 responds to that, so that's good. And we were in the midst of

02:07PM 21 Mr. Mottl's cross-examination and you may resume that,

02:07PM 22 Mr. Mottl, when you're ready.

02:07PM 23 MR. MOTTl: Thank you.

02:07PM 24 JOHN SURINA,

02:07PM 25 (Resumed the stand.)

02:07PM 1 RESUMED CROSS-EXAMINATION

02:08PM 2 BY MR. MOTTL:

02:08PM 3 Q Good afternoon, Detective.

02:08PM 4 A Good afternoon.

02:08PM 5 Q I want to follow up with some spot questions. They may be

02:08PM 6 a little dissociated. I'll try and give a background on what

02:08PM 7 they are based on from your testimony. If you have anything to

02:08PM 8 correct, just let me know.

02:08PM 9 Detective, in your training, were you provided with

02:08PM 10 alternative or single alternative scripts that you would use on

02:08PM 11 how to approach these individuals in your chat, a script of

02:08PM 12 what you might say?

02:08PM 13 A No.

02:08PM 14 Q So you, in the various times you've used it, have

02:08PM 15 developed your own words, phrasings, etcetera?

02:09PM 16 A Yes.

02:09PM 17 Q Now, I think there was a question yesterday asked by the

02:09PM 18 state, the government, regarding use of the profile that was

02:09PM 19 set up by you in this case, if it was used in other cases and

02:09PM 20 your answer was yes?

02:09PM 21 A No, it was no.

02:09PM 22 Q Did you use -- the devices you used, you began with a

02:09PM 23 computer, a laptop or a desktop, and then you switched to a

02:09PM 24 phone, correct?

02:09PM 25 A In regards to what?

02:09PM 1 Q In regard to the texting on both the use of Skout and then
02:09PM 2 the switching over to a phone or a telephone number which you
02:09PM 3 provided to Mr. Cummings. So those -- I'm referring to those.

02:10PM 4 Were they -- go ahead.

02:10PM 5 A Regarding the Skout application, that was set up using an
02:10PM 6 iPad, and then communication via cellular via text message was
02:10PM 7 done via computer, or it could be used on an iPad as well too.
02:10PM 8 Either one is --

02:10PM 9 Q I see.

02:10PM 10 Were there other people -- there were other people
02:10PM 11 there. You referred to a team.

02:10PM 12 While you were texting, were there other people around
02:10PM 13 you?

02:10PM 14 A Yes, sir.

02:10PM 15 Q And were they part of a team or were they observing?

02:10PM 16 A They were part of the same group of the Operation Keiki
02:10PM 17 Shield.

02:10PM 18 Q Now, you as functioning as you did, pretty much your sole
02:10PM 19 activity with the County of Maui in the police department there
02:10PM 20 or did you have other duties?

02:11PM 21 A My sole responsibility during this operation was being a
02:11PM 22 chatter, communication.

02:11PM 23 Q Okay, yeah, and it was a busy operation. So during this
02:11PM 24 operation, it was your sole engagement. You were involved with
02:11PM 25 this and nothing else.

02:11PM 1 A That was my assignment.

02:11PM 2 Q When did you put the profile onto Skout?

02:11PM 3 A I believe it was around midnight of March 12, '13.

02:11PM 4 Q Now, at the same -- at the same time period, had you
02:11PM 5 placed profile on any other websites that dealt with social
02:11PM 6 interaction, dating, etcetera, etcetera, those things, or was
02:11PM 7 it just Skout?

02:11PM 8 A I can't recall for that specific operation. Typically we
02:11PM 9 would have more than one site that we would use.

02:11PM 10 Q Overall have you used -- could you estimate the number of
02:12PM 11 sites that you used in addition to Skout throughout your work
02:12PM 12 here in the islands?

02:12PM 13 A The amount of different platforms and applications that
02:12PM 14 I've used for during these enticement operations?

02:12PM 15 Q Yes.

02:12PM 16 A Approximately 20 to 25 maybe.

02:12PM 17 Q But in this operation you just used Skout, correct?

02:12PM 18 A No. This operation I used most likely multiple different
02:12PM 19 websites, applications. I can't recall from this operation
02:12PM 20 which other ones that I used besides Skout.

02:12PM 21 Q So that it might have been possible for you to receive a
02:13PM 22 response on Skout as you did with Mr. Cummings, and roughly at
02:13PM 23 the same time, shortly before or after, responses on some of
02:13PM 24 the other ones you were using?

02:13PM 25 A It could be possible.

02:13PM 1 Q You don't have a recollection?

02:13PM 2 A No.

02:13PM 3 Q When you -- were you the exclusive chatter expert and
02:13PM 4 functioning in this type of capacity, the sole one working at
02:13PM 5 Maui Police Department with the federal agencies and units that
02:13PM 6 were there? Was there any -- were there any other people
02:13PM 7 functioning in the role that you were carrying out as you've
02:13PM 8 testified to?

02:13PM 9 A Were there other chatters working during this operation?

02:14PM 10 Q Right.

02:14PM 11 A Yes.

02:14PM 12 Q Approximately how many others?

02:14PM 13 A I don't recall. Sometimes between three to four.

02:14PM 14 Q Were you in the same room?

02:14PM 15 A Yes, sir.

02:14PM 16 Q And did they have -- were they also, do you know whether
02:14PM 17 they were using Skout or not?

02:14PM 18 A They were not.

02:14PM 19 Q There were other --

02:14PM 20 A Other platforms.

02:14PM 21 Q Did they have the same training as you at the same
02:14PM 22 locations, or was it the case where they were trained at other
02:14PM 23 sites. On the mainland, you said Washington was where you
02:14PM 24 received your training?

02:14PM 25 MS. OLSON: Objection, relevance and calls for

02:14PM 1 speculation.

02:14PM 2 THE COURT: Sustained.

02:14PM 3 BY MR. MOTTL:

02:14PM 4 Q Did you have any idea -- were you in communication with

02:15PM 5 the other individuals working out of Maui Police Department in

02:15PM 6 terms of what their activities were and what responses they had

02:15PM 7 to the profiles that they had set up?

02:15PM 8 MS. OLSON: Objection, relevance.

02:15PM 9 THE COURT: Sustained.

02:15PM 10 BY MR. MOTTL:

02:15PM 11 Q At any time were you made aware that at approximately the

02:15PM 12 same time; that is, between March 13th through March 16th,

02:15PM 13 2020, on Maui and roughly involving the same area, Kihei, that

02:15PM 14 there were ten other arrests where similar charges --

02:15PM 15 MS. OLSON: Objection, relevance.

02:15PM 16 MR. MOTTL: Beg your pardon?

02:15PM 17 THE COURT: Where is this going, Mr. Mottl?

02:15PM 18 MR. MOTTL: I'm just -- I'm asking about, Your Honor,

02:15PM 19 the totality of people that responded to profiles that were set

02:16PM 20 up out of the Maui Police Department, and if the detective was

02:16PM 21 aware that in Kihei there was ongoing investigations and sting

02:16PM 22 operations independent of what he was engaged with.

02:16PM 23 THE COURT: I don't understand what the question about

02:16PM 24 ten other arrests means. I want to know why it's relevant.

02:16PM 25 MR. MOTTL: I think there's an issue of the approach

02:16PM 1 that was used and whether Mr. Cummings was himself sort of
02:17PM 2 enticed and moved into a certain direction using the techniques
02:17PM 3 that the detective described yesterday, and were those used in
02:17PM 4 other instances. So my question is -- well, I asked him if he
02:17PM 5 was aware that -- or he had any knowledge of other arrests
02:17PM 6 taking place between the 13th and 16th in Kihei for the same --
02:17PM 7 on the same charges that Mr. Cummings was, and I'm interested
02:17PM 8 in the approaches that may have been taken in those cases.

02:17PM 9 I realize that I have the answers on that. They were
02:17PM 10 independent, but the -- the detective has not responded -- he
02:18PM 11 has responded that he is not aware of it and that was my
02:18PM 12 inquiry. I would be happy to refresh his recollection to see
02:18PM 13 if he might recall that it was the case.

02:18PM 14 THE COURT: Are you done?

02:18PM 15 MR. MOTTL: Beg your pardon?

02:18PM 16 THE COURT: Are you done?

02:18PM 17 MR. MOTTL: I am, Your Honor.

02:18PM 18 THE COURT: The objection is sustained.

02:18PM 19 BY MR. MOTTL:

02:18PM 20 Q Detective, you, in response to questions laying the
02:18PM 21 foundation for -- actually, reading through the document
02:18PM 22 transcripts of the, first the Skout and then the text exchanges
02:18PM 23 that you had, you laid a foundation for Exhibit Number 1, which
02:19PM 24 was -- I have two pages here, but one is, basically is not --
02:19PM 25 is a photograph and there is no -- do you have this exhibit

02:19PM 1 there? It's under the Number 1?

02:19PM 2 MS. PERLMUTTER: Would you like that published? That

02:19PM 3 would be -- Mr. Mottl, would you like that published?

02:19PM 4 MR. MOTTL: No. Actually, he can answer --

02:19PM 5 THE COURT: I will ask the questions with respect to

02:19PM 6 publication of exhibits.

02:19PM 7 MS. PERLMUTTER: We can do it, Your Honor.

02:19PM 8 THE COURT: You want the witness to refer to

02:19PM 9 Exhibit 1?

02:19PM 10 MR. MOTTL: Yes, I do.

02:19PM 11 THE COURT: Is that what you're asking?

02:19PM 12 MR. MOTTL: Please. I have no problems with it being

02:19PM 13 published if --

02:19PM 14 THE COURT: The question is whether you want it

02:19PM 15 published.

02:19PM 16 MR. MOTTL: I don't think that's necessary, Your

02:19PM 17 Honor.

02:19PM 18 THE COURT: Detective, if you could refer to

02:19PM 19 Exhibit 1, please.

02:19PM 20 BY MR. MOTTL:

02:19PM 21 Q Do you have two pages under the section Number 1?

02:20PM 22 A Yes, sir.

02:20PM 23 Q Now, the first one, and this is -- I'll lay a foundation

02:20PM 24 that these were the profiles that you prepared and used on

02:20PM 25 Skout.

02:20PM 1 A Yes, sir.

02:20PM 2 Q Now, the first page is -- has a photograph of the officer
02:20PM 3 whose photograph you used, a female, and there is a blank space
02:20PM 4 underneath and a green strip that says, "add photos."
02:20PM 5 Otherwise there's nothing there. There's no information there.

02:20PM 6 And then if I can draw your attention to the second
02:20PM 7 page, there is a similar image except that it's not blank and
02:20PM 8 there is a box within the image, and it appears to be an edit
02:21PM 9 profile form with some information filled out, but it doesn't
02:21PM 10 appear that it was finalized where it was a completed profile
02:21PM 11 page. That says, "edit profile" and then there are a number of
02:21PM 12 things that are filled out. A female was the persona that you
02:21PM 13 were assuming, what her interests were and whatnot, but that's
02:21PM 14 incomplete. The next step might have been to hit save and
02:21PM 15 therefore it would have generated a true permanent, I gather,
02:21PM 16 though it says possibly --

02:21PM 17 MS. OLSON: Objection. Is there a question?

02:21PM 18 MR. MOTTL: Yes. I'm going to --

02:21PM 19 THE COURT: If you have a question, ask it.

02:21PM 20 BY MR. MOTTL:

02:22PM 21 Q This is not a completed profile, correct?

02:22PM 22 A No, it is a completed profile.

02:22PM 23 Q It is?

02:22PM 24 A Yes.

02:22PM 25 Q Oh, okay. So this was used throughout, you just left it

02:22PM 1 as is; that is, not edited?

02:22PM 2 A During the creation of the profile, I chose to put in some
02:22PM 3 things into her profile and other things that I would believe
02:22PM 4 leave blank regarding possible interests or the body type, just
02:22PM 5 as somebody might do when they're creating a profile. You can
02:22PM 6 pick and choose what you want to answer regarding -- of
02:22PM 7 yourself when you're creating a profile.

02:22PM 8 Q So it's not the case that you would have probably hit a
02:22PM 9 return button and information you put would have gone
02:22PM 10 permanently into the records of Skout.

02:22PM 11 A No, sir. I created the --

02:22PM 12 MS. OLSON: Objection, relevance.

02:22PM 13 THE COURT: It's overruled. Go ahead.

02:23PM 14 THE WITNESS: I created the profile. After creating
02:23PM 15 the profile, I screen recorded it, took screen images of it of
02:23PM 16 which you see are in Exhibit Number 1. That is my profile for
02:23PM 17 Skout.

02:23PM 18 BY MR. MOTTL:

02:23PM 19 Q So your testimony is that the second page is a completed
02:23PM 20 profile and so far as you are following through with
02:23PM 21 establishing a record of what's happening, you had no problems
02:23PM 22 just submitting this and using this, essentially an incompleated
02:23PM 23 profile. The edit hasn't been put in. It could have been
02:23PM 24 changed or just submitted as is. So I guess to answer the
02:23PM 25 question. So this is what the completed profile of your

02:23PM 1 persona was.

02:23PM 2 Just -- and in comparison to that, Exhibit 2 is the

02:24PM 3 profile of Mr. Cummings and that, as opposed to the previous

02:24PM 4 one, appears to be completed. Whatever editing or whatever

02:24PM 5 entry forms existed, they were completed and that was placed in

02:24PM 6 the permanent file of the website Skout.

02:24PM 7 MS. OLSON: Objection, calls for speculation.

02:24PM 8 BY MR. MOTTL:

02:24PM 9 Q Is that correct?

02:24PM 10 MS. OLSON: He's not an expert on Skout.

02:24PM 11 THE COURT: You can answer if you know, sir.

02:24PM 12 THE WITNESS: I could tell you for relevancy to this
02:24PM 13 is that there are some areas of Mr. Cummings's profile that he
02:24PM 14 did not put information on, just like in my profile I did not
02:24PM 15 put information on.

02:24PM 16 BY MR. MOTTL:

02:24PM 17 Q I'm sorry. Could you speak louder?

02:24PM 18 A Sure. I can tell you that based on what you're -- I think
02:24PM 19 that you're getting at is that my profile has some parts that I
02:25PM 20 did not complete, and just like Mr. Cummings has some parts of
02:25PM 21 his Skout profile that were not complete.

02:25PM 22 Q That's true. My point was or my purpose in asking is
02:25PM 23 Mr. Cummings, as opposed to the one you submitted or the one
02:25PM 24 submitted as an exhibit, so this is submitted as an exhibit as
02:25PM 25 to what the profile was, yet it's not complete in that there is

02:25PM 1 an edit page which is partially filled out, and normally when
02:25PM 2 you edit something, it's there, there's an edit and as there is
02:25PM 3 in this exhibit, portion of Exhibit 1, a background that the
02:25PM 4 information would be placed into.

02:25PM 5 So that has not been done, and that is the extent of
02:25PM 6 the profile that you used and you find that acceptable. I
02:26PM 7 understand that as opposed to Mr. Cummings. I think -- thank
02:26PM 8 you. I understand it's a while, but I'll go on. Thank you.

02:26PM 9 I have a question regarding the profile page, which is
02:26PM 10 again Exhibit 1, and in the upper corner on both the first page
02:26PM 11 and the second page is an image of a little bell, which I would
02:26PM 12 guess is probably some sort of -- part of the program that
02:26PM 13 responds when a message comes in so that there's a bell, upper
02:27PM 14 right-hand, and over it a red dot with a number in there. It
02:27PM 15 appears that that is a number of the messages that came in to
02:27PM 16 your computer or your site that have not been responded to or
02:27PM 17 not answered.

02:27PM 18 The number in there appears to be 59; is that correct?

02:27PM 19 A I'm sorry. Yes, I see that that's number 59.

02:27PM 20 Q Sorry?

02:27PM 21 A The number is 59. I see what you're saying.

02:27PM 22 Q Now, on the next page, same thing. There's a dot and
02:28PM 23 maybe you can make it out. I can't offhand. I guess it says
02:28PM 24 it's 59 also. Both of them say 59.

02:28PM 25 This is the only case you worked on and you were using

02:28PM 1 this phone to communicate with a person who eventually became a
02:28PM 2 suspect and who was -- is being prosecuted for it.

02:28PM 3 Was this used for your other business activities or
02:28PM 4 this is a single cell phone that was used in this
02:28PM 5 investigation?

02:28PM 6 A I'm sorry?

02:28PM 7 MS. OLSON: Objection, confusing question.

02:28PM 8 THE COURT: I think it misstates his testimony. The
02:28PM 9 objection is sustained.

02:28PM 10 BY MR. MOTTL:

02:28PM 11 Q It appears there are 59 messages awaiting some kind of
02:28PM 12 response or at least to be looked at before the number went
02:29PM 13 down and you had fewer there. I was wondering were these 59 in
02:29PM 14 response to the profile that you had set up and these were
02:29PM 15 coming in through the system you were working the investigation
02:29PM 16 through?

02:29PM 17 A For Skout, when you get notifications on the right-hand
02:29PM 18 side, which he's referring to, sometimes there could be text
02:29PM 19 messages. Sometimes it could be from the Skout app, the
02:29PM 20 administrator. Sometimes it can be from somebody who liked
02:29PM 21 your profile. Sometimes it can be from somebody who viewed
02:29PM 22 your profile. Somebody viewed your profile, you can get
02:29PM 23 notifications. So I think that mischaracterizes to say that
02:29PM 24 they were messages that I received. I don't recall what all of
02:29PM 25 those were at the time.

02:29PM 1 Q They're dated Friday, March 13th at 11:39 a.m.

02:30PM 2 THE COURT: I'm not sure what you're referring to,

02:30PM 3 Mr. Mottl. What is dated March 13th at 11:39 a.m.?

02:30PM 4 MR. MOTTL: The left side upper border of both sheets

02:30PM 5 in Exhibit 1 has a date there. I see Friday, March 13th and

02:30PM 6 then the time is 11:31 a.m., and I gather that's the time that

02:30PM 7 the --

02:30PM 8 THE COURT: I don't see that at all. What are you

02:31PM 9 looking at? Are you looking at Exhibit 1?

02:31PM 10 MR. MOTTL: Yes.

02:31PM 11 THE COURT: Where does it say 11:39 a.m.?

02:31PM 12 MR. MOTTL: First page is -- here's the red dot. Over

02:31PM 13 the logo there's a bell, and then over here, right over here is

02:31PM 14 the date. There's not a bar on top that --

02:31PM 15 THE COURT: I'm looking at Exhibit 1. I learned to

02:31PM 16 read long ago and I do not see 11:39 a.m.

02:31PM 17 Does your copy, Counsel, say 11:39 a.m.?

02:31PM 18 MR. MOTTL: No. It's 12:31 a.m. and it's Friday,

02:31PM 19 March 13th at 12:31 a.m. Does it say 12:31?

02:31PM 20 THE COURT: That's what my copy says.

02:31PM 21 MR. MOTTL: Oh, I'm sorry.

02:31PM 22 THE COURT: Do you have a question about that?

02:31PM 23 MR. MOTTL: No, I'm glad that it also appears on the

02:32PM 24 Court's copy. Thank you for the correction.

02:32PM 25 BY MR. MOTTL:

02:32PM 1 Q The woman from the communications on Skout to the use of
02:32PM 2 cellphones was suggested by you; isn't that correct?

02:32PM 3 A Yes.

02:32PM 4 MS. OLSON: Objection, mischaracterizes the testimony
02:32PM 5 somewhat.

02:32PM 6 THE COURT: Overruled.

02:33PM 7 MR. MOTTL: I recall otherwise. I'm sorry.

02:33PM 8 BY MR. MOTTL:

02:33PM 9 Q You suggested transferring the interaction from Skout to
02:33PM 10 cellphones and then in response to that, Mr. Cummings requested
02:33PM 11 a telephone number he could call. And you gave him the number
02:33PM 12 and he, relatively short period of time afterwards he called,
02:33PM 13 and it began on a texting platform within the cellphone, over
02:33PM 14 the cellphone, correct?

02:33PM 15 A Yes.

02:33PM 16 Q He didn't object to that. There was no problem. He just
02:33PM 17 consented and you gave him the number, right?

02:33PM 18 A Yes.

02:34PM 19 Q The -- if I can point out specific places, but in quite a
02:34PM 20 few places I can, for example, Exhibit 3, page 1, Number 3 in
02:34PM 21 the first page there, in the interaction he submitted a text at
02:34PM 22 11:44 p.m., so in the relatively early afternoon, and then you
02:34PM 23 returned it at 9:57.

02:34PM 24 THE COURT: You mean 1:44 p.m.?

02:34PM 25 MR. MOTTL: I must be -- yes, 1:44 p.m. was

02:34PM 1 Mr. Cummings's text and it was responded to at 11:57.

02:35PM 2 THE COURT: You mean 9:57?

02:35PM 3 MR. MOTTL: 9:57. I'm sorry. Let me have another --

02:35PM 4 BY MR. MOTTL:

02:35PM 5 Q And then on page 3 of -- page 3 of Exhibit 3, Mr. Cummings
02:35PM 6 texts you at 10:21 p.m. on Friday and then you responded at
02:35PM 7 2:36 a.m. on Saturday, so early in the morning.

02:35PM 8 When your -- were those -- did you pace or respond in
02:35PM 9 different ways at different times to see what Mr. Cummings's
02:36PM 10 was reacting to or what might react, whether it was a quick
02:36PM 11 reply or delayed reply, or was it just your responses were
02:36PM 12 essentially the result of your having other activities and
02:36PM 13 doing other things and then responding to him? Was that
02:36PM 14 planned out; that is, the distance between your response?

02:36PM 15 A That was not planned out.

02:36PM 16 Q So it was just a matter of whether --

02:36PM 17 A That's when I decided to reply to him.

02:36PM 18 Q Thank you.

02:36PM 19 In your -- I refer to -- I asked you about a script
02:36PM 20 that may have been taught to you in engaging suspects in your
02:36PM 21 investigations, referring to what you may have been taught and
02:36PM 22 your schooling on the mainland, and you said no it was pretty
02:37PM 23 much what you decided you would say and that's what you
02:37PM 24 proceeded on. These were your words that you decided to
02:37PM 25 communicate to Mr. Cummings to see how he might respond; is

02:37PM 1 that correct?

02:37PM 2 A These were my words that I chose to use to text with.

02:37PM 3 Q Did you have a strategy or did you feel that you had sort

02:37PM 4 of a strategy or approach you'd use? I don't know how --

02:37PM 5 whether you're actually more of a technician artist or an

02:37PM 6 artist in how you pull these things together. I'll just jump

02:37PM 7 to my question.

02:37PM 8 It seems that the words used and the scenario, the

02:37PM 9 story that you were presenting in being this persona, a

02:38PM 10 35-year-old initially and then after informing him that you

02:38PM 11 were 14, no, 13, becoming 14, two different parts of your

02:38PM 12 presentation, did you try to sort of create an impression that

02:38PM 13 the persona Kiana was frustrated and upset about her situation,

02:38PM 14 maybe based on boredom? You used the words -- I'm sorry. I'm

02:38PM 15 jumping. I'll use the word drama and then sort of a --

02:38PM 16 MS. OLSON: Objection, compound question.

02:38PM 17 BY MR. MOTTL:

02:38PM 18 Q -- drama.

02:38PM 19 THE COURT: Not a compound question --

02:38PM 20 BY MR. MOTTL:

02:38PM 21 Q Was that just --

02:39PM 22 MR. MOTTL: Excuse me, Your Honor. I'm sorry.

02:39PM 23 THE COURT: Give me a chance to rule.

02:39PM 24 MR. MOTTL: Yes.

02:39PM 25 THE COURT: The objection is overruled. It's not a

02:39PM 1 compound question because it's not a question.

02:39PM 2 Do you have a question?

02:39PM 3 BY MR. MOTTL:

02:39PM 4 Q Were you trying to create a sort of an emotional state of
02:39PM 5 the early teen that you were impersonating or --

02:39PM 6 A Sometimes I can be relevant to a communication, but it
02:39PM 7 depends on the feel of the conversation.

02:39PM 8 Q So you had no thoughts about the type of -- type of
02:39PM 9 personality of the individual that you were impersonating and
02:39PM 10 presenting it to Mr. Cummings. That's not the case?

02:39PM 11 A I'm sorry, sir, that I had no feelings of the personality
02:40PM 12 of my persona?

02:40PM 13 Q The ones -- yeah. I don't want to interrupt you about the
02:40PM 14 answer or the emotional state of the person you were --

02:40PM 15 A There was nothing per se scripted. It was a lot of what a
02:40PM 16 possible 13-year-old might be feeling or going through at the
02:40PM 17 time.

02:40PM 18 Q So and that's -- your statement said she had a cousin that
02:40PM 19 she was frustrated with and a friend that sort of was messing
02:40PM 20 things up, and she was sort of impatient and wanting to get out
02:40PM 21 of the house. That all just sort of unfolded?

02:40PM 22 A Yes, sir.

02:40PM 23 Q Thank you.

02:41PM 24 MR. MOTTL: Thank you. No more questions.

02:41PM 25 THE COURT: Redirect?

02:41PM 1 MS. OLSON: None, Your Honor.

02:41PM 2 THE COURT: Please call your next witness.

02:41PM 3 Thank you, Detective.

02:41PM 4 Your next witness.

02:41PM 5 MS. OLSON: The government calls Officer Kahiapo

02:42PM 6 Kauhaahaa.

02:42PM 7 THE CLERK: Please raise your right hand.

02:42PM 8 KAHIAPO KAUHAAHAA,

02:42PM 9 called as a witness, having been first duly sworn, was examined

02:42PM 10 and testified as follows:

02:42PM 11 THE CLERK: Please state your full name, spelling your

02:42PM 12 last name for the record.

02:42PM 13 THE WITNESS: Kahiapo Kauhaahaa, K-A-U-H-A-A-H-A-A.

02:42PM 14 DIRECT EXAMINATION

02:42PM 15 BY MS. OLSON:

02:42PM 16 Q Good afternoon.

02:42PM 17 How are you employed?

02:42PM 18 A Police officer with the Maui Police Department.

02:42PM 19 Q How long have you been so employed?

02:42PM 20 A Approximately nine years.

02:42PM 21 Q What's your title?

02:42PM 22 A I'm in the -- a police officer in the vice division.

02:42PM 23 Q What's the vice division?

02:42PM 24 A We investigate narcotics, gambling and morals,

02:43PM 25 prostitution type investigations, human trafficking.

02:43PM 1 Q Do you have experience making arrests?

02:43PM 2 A Yes.

02:43PM 3 Q How many arrests, approximately, in your career have you
02:43PM 4 made, roughly?

02:43PM 5 A Over a hundred.

02:43PM 6 Q Did you receive training on making arrests?

02:43PM 7 A Yes.

02:43PM 8 Q Could you describe that very briefly.

02:43PM 9 A Once we know that there is a crime being committed, we
02:43PM 10 have PC, we affect an arrest by placing handcuffs on the person
02:43PM 11 after informing them that they are under arrest, and take them
02:43PM 12 down to the police station and process them accordingly.

02:43PM 13 Q And very briefly, could you give an overview of the
02:43PM 14 training that you -- not the content of the training, but just
02:43PM 15 summarize previously. Do you learn that at the police academy
02:43PM 16 or at what stage --

02:43PM 17 A Yes. During police academy, we are trained by senior
02:43PM 18 officers on how to arrest someone.

02:44PM 19 Q Do you have experience in undercover operations and
02:44PM 20 investigations?

02:44PM 21 A Yes.

02:44PM 22 Q About how many of those would you say you participated in
02:44PM 23 your career as a police officer, ballpark?

02:44PM 24 A Over 30.

02:44PM 25 Q And did you have any specific training in undercover

02:44PM 1 operations?

02:44PM 2 A Yes. Yes.

02:44PM 3 Q Could you describe that briefly?

02:44PM 4 A I've been a part of -- I don't know off the top of my head
02:44PM 5 what specific training. HPD has like a week program on UC or
02:44PM 6 undercover officer training.

02:44PM 7 Also working with other senior officers at the Maui
02:44PM 8 Police Department, they teach us how they were trained and what
02:44PM 9 is expected as a police officer.

02:44PM 10 Q And how were you assigned on March 15th of 2020?

02:45PM 11 A I was assigned to the -- assist in an electronic
02:45PM 12 enticement of a child type investigation, and I was tasked to
02:45PM 13 the surveillance and takedown team.

02:45PM 14 Q Can you describe what the surveillance and takedown team
02:45PM 15 was supposed to do as part of that operation?

02:45PM 16 A Yes. So surveillance takedown, basically what it is, how
02:45PM 17 it's set, surveillance would identify or be in an undercover
02:45PM 18 capacity, plain clothes in undercover cars. We would identify
02:45PM 19 any offender or target you could say, and then the takedown
02:45PM 20 portion would be the arrest, the contact with the offender and
02:45PM 21 then successfully arresting the offender once the crime has
02:45PM 22 been committed.

02:45PM 23 Q Did the operation that night on March 15, 2020 have a
02:45PM 24 particular name?

02:45PM 25 A Yes, Operation Keiki Shield.

02:46PM 1 Q Did you and your team end up arresting anybody that night

02:46PM 2 as part of that operation?

02:46PM 3 A Yes.

02:46PM 4 Q Who was it?

02:46PM 5 A For this particular investigation.

02:46PM 6 Q On March 15th, 2020, did you participate in the arrest of

02:46PM 7 anyone in connection with this Operation Keiki Shield?

02:46PM 8 A Yes.

02:46PM 9 Q Who was it?

02:46PM 10 A Lyle Cummings.

02:46PM 11 Q How did you first hear about Lyle Cummings that night?

02:46PM 12 A So we were given information from the intel gathering

02:46PM 13 team, I guess you could say, that a possible target identified

02:46PM 14 as Lyle Cummings, and they gave a photograph and a description

02:46PM 15 of the possible offender.

02:46PM 16 Q Do you know how they identified him as Lyle Cummings at

02:46PM 17 that point?

02:46PM 18 A I'm not sure how they came across that information, but

02:46PM 19 I'm assuming that they did some kind of check on whatever

02:47PM 20 databases that they have after he used a device to contact the

02:47PM 21 undercover officer.

02:47PM 22 Q The particular phone number or...

02:47PM 23 A Yes.

02:47PM 24 Q Not sure.

02:47PM 25 A Yeah, I'm not sure. Sorry.

02:47PM 1 Q So you and your team were told to go out and arrest him.

02:47PM 2 Is that what your testimony is?

02:47PM 3 A Yeah, so command post related to us that Lyle Cummings was
02:47PM 4 in con -- utilizing a device to contact an undercover officer
02:47PM 5 posing as a 13-year-old girl, at which point at around, I don't
02:47PM 6 know, 7:30 that evening of the March 15th, we were told that he
02:47PM 7 was willing to meet this undercover officer at a predetermined
02:47PM 8 meet location.

02:47PM 9 Q Did you know what that predetermined meet location was?

02:47PM 10 A Yes. It was a beach access off of South Kihei, which is
02:48PM 11 directly across of Kilohana park -- Kilohana parking lot.

02:48PM 12 Q I think you used the word "intel."

02:48PM 13 Could you just describe a little bit more of what that
02:48PM 14 is?

02:48PM 15 A The intel team would be a group of people dedicated to
02:48PM 16 gathering information on potential offenders in this type of
02:48PM 17 investigation.

02:48PM 18 Q So you were being given information that night from the
02:48PM 19 intel.

02:48PM 20 A Yes.

02:48PM 21 Q You mentioned you had the name Lyle Cummings.

02:48PM 22 Did you have any other information about him?

02:48PM 23 A Yes. So once we received information from command post
02:48PM 24 that Lyle was headed to the predetermined meet location, they
02:48PM 25 said that he would be arriving in a white Toyota pickup,

02:48PM 1 license plate LAJ777 or a GMC Yukon with the vanity plates
02:48PM 2 D-U-C-F-A-T.

02:49PM 3 Q What did the team do after you were given the meet
02:49PM 4 location?

02:49PM 5 A So the surveillance slash takedown team set up in the
02:49PM 6 immediate area of Kilohana parking lot and the intersection of
02:49PM 7 right where the beach access is located. Prior to or after
02:49PM 8 being notified, we placed an undercover officer who was posing
02:49PM 9 as a decoy under the assumed name Kiana. We had her stand
02:49PM 10 there on the side of South Kihei Road in view of that
02:49PM 11 intersection.

02:49PM 12 At this point, I mean it was about 7:00 so it was
02:49PM 13 fairly -- it was dark. The sun was down at this time. So we
02:50PM 14 had multiple officers all dressed in plain clothes in
02:50PM 15 undercover cars posted in the area so they could see and
02:50PM 16 identify, make sure that we were obviously arresting the right
02:50PM 17 person.

02:50PM 18 Q And you mentioned a female undercover officer.

02:50PM 19 Who was that?

02:50PM 20 A Yes. That was undercover Officer Ariga from the Maui
02:50PM 21 Police Department.

02:50PM 22 Q And what was -- could you describe her role again in the
02:50PM 23 operation?

02:50PM 24 A She was the undercover decoy we call them, and they
02:50PM 25 utilize -- they're generous to the allow us to utilize their

02:50PM 1 photographs to -- in this types of investigations to use as,
02:50PM 2 you know, assumed persona from whatever names or however the
02:50PM 3 chatter or whatever would use.

02:51PM 4 Q So how was your team set up physically at the meetup
02:51PM 5 location where you expected Lyle Cummings?

02:51PM 6 A Okay. So like I explained, so we had a surveillance
02:51PM 7 arrest takedown team set up in the immediate area. I was
02:51PM 8 specifically assigned to UC cover. UC cover is basically a
02:51PM 9 protection detail or protection team dedicated to the
02:51PM 10 undercover officer. So she was standing at the side of the
02:51PM 11 road and we were in like maybe 20 feet behind her hiding in
02:51PM 12 plain clothes, anticipating that someone, possibly Lyle
02:51PM 13 Cummings, would arrive to this predetermined meet location.

02:51PM 14 Q Where were you hiding?

02:51PM 15 A It was behind like this wall, like right down the -- like
02:52PM 16 several feet down the beach access towards the beach, yeah, but
02:52PM 17 we had visual of the -- of Kiana or and the roadway that she
02:52PM 18 was in her immediate area, I guess you could say.

02:52PM 19 Q How many officers were hiding?

02:52PM 20 A I want to say behind me, maybe three, three or four of us
02:52PM 21 total.

02:52PM 22 Q Were they all in plain clothes?

02:52PM 23 A Yes.

02:52PM 24 Q Was there any indication of a law enforcement presence
02:52PM 25 right around the immediate area?

02:52PM 1 A No. Like I said, we were all dressed in plain clothes.

02:52PM 2 Everyone in the surveillance takedown team was either unmarked

02:52PM 3 police cars, unmarked -- yeah, no uniforms or anything like

02:52PM 4 that, so no sign of any police presence.

02:52PM 5 Q Can you describe just very briefly what you mean by

02:52PM 6 unmarked?

02:52PM 7 A Yeah. So police cars that are equipped with emergency

02:53PM 8 lights and sirens, but they don't have any police decals or

02:53PM 9 light bars that were common to see in public.

02:53PM 10 Q Why was the arrest team hiding?

02:53PM 11 A Specifically for these types of investigations, it's an

02:53PM 12 undercover proactive type investigation, so we like to keep the

02:53PM 13 continuity of the investigation by concealing that we're law

02:53PM 14 enforcement and that offenders of these types of investigations

02:53PM 15 like to identify or evade police apprehension by identifying

02:53PM 16 law enforcement prior to meeting with or getting to that

02:53PM 17 location.

02:53PM 18 Q And can you describe briefly again, where was Kiana

02:53PM 19 standing?

02:53PM 20 A She was --

02:53PM 21 Q I'm sorry. When I say Kiana, I mean the undercover

02:53PM 22 officer playing the physical role of Kiana.

02:53PM 23 A So she was standing on basically the sidewalk of South

02:54PM 24 Kihei Road fronting the beach access, and that was just north

02:54PM 25 of the intersection of South Kihei and Kilohana Drive.

02:54PM 1 Q Was she hiding?

02:54PM 2 A No, she was in plain sight.

02:54PM 3 Q What happened next?

02:54PM 4 A So we received information that Lyle was supposed to be

02:54PM 5 arriving. Surveillance team identifies vehicle, white Toyota

02:54PM 6 pickup, license plate LAJ777 arrive in the parking lot,

02:54PM 7 Kilohana parking lot. They observe the vehicle exit the

02:54PM 8 parking lot and head down Kilohana Drive to the intersection of

02:54PM 9 South Kihei Road, stops at that stop line, at which point the

02:54PM 10 surveillance team identifies Lyle as the sole occupant and

02:54PM 11 operator of the vehicle; at which time he stopped there for a

02:55PM 12 while. Then he creeps into the -- sorry. Am I going too --

02:55PM 13 Q Go ahead.

02:55PM 14 A So he actually creeps into the intersection basically

02:55PM 15 facing the undercover officer with his vehicle. So the lights

02:55PM 16 are on, it's dark, and you could see the lights flash off and

02:55PM 17 on, off and on as if he was anticipating that the UC officer,

02:55PM 18 Kiana, would approach the vehicle.

02:55PM 19 Q Did you personally observe what you just described?

02:55PM 20 A Yes.

02:55PM 21 Q How far away, about, were you?

02:55PM 22 A I Google mapped this, so it's about 50 -- approximately

02:55PM 23 50 feet from the UC officer's -- where she was standing to

02:55PM 24 where his vehicle was inside the intersection of that area.

02:55PM 25 Q You're talking about the person playing the role of Kiana.

02:56PM 1 A Yes. Sorry. Yes, Kiana.

02:56PM 2 Q How far away were you observing this from?

02:56PM 3 A I was pretty much right behind her, so roughly 60 feet I
02:56PM 4 guess you could say, yeah.

02:56PM 5 Q Was it your impression that the person driving that white
02:56PM 6 truck you're describing would have been able to see the person
02:56PM 7 playing Kiana?

02:56PM 8 A Yes. For sure, yes.

02:56PM 9 Q And you said the truck was sort of facing her, the front
02:56PM 10 of the truck?

02:56PM 11 A Yes. The way that it was stopped in the roadway, it was
02:56PM 12 facing the -- Kiana. The headlights was facing her directly
02:56PM 13 basically.

02:56PM 14 Q And you said the lights on the truck flashed?

02:56PM 15 A Yes.

02:56PM 16 Q Did you have an impression at that time as to why?

02:56PM 17 A Yeah. It appeared as though he was waiting for the --
02:56PM 18 Kiana to approach the vehicle, try and get her attention.

02:57PM 19 Q Where was -- I'm sorry if you said this already, but could
02:57PM 20 you just repeat? Where was the person playing Kiana standing
02:57PM 21 in relation to the white truck?

02:57PM 22 A Sorry. So she was on the side of the road, so across the
02:57PM 23 street, basically across the street from where the truck was
02:57PM 24 stopped. Basically the truck was stopped in the intersection
02:57PM 25 across the street from where Kiana was standing.

02:57PM 1 Q Do you know about how long the truck was stopped there?

02:57PM 2 A It was for a while I guess you could say. It wasn't a
02:57PM 3 regular stop at a stop sign. It was a longer than that, yeah.

02:57PM 4 Q Was the position of the truck sort of right in line with
02:57PM 5 where you would normally stop at a stop sign?

02:58PM 6 A He initially stopped at the stop line and then he stopped
02:58PM 7 there for a while, and then he crept into the intersection
02:58PM 8 basically blocking the lane of travel for a period of time, at
02:58PM 9 which point the lights went off and on.

02:58PM 10 Q And then what happened?

02:58PM 11 A From there we were -- we affected a takedown or a stop of
02:58PM 12 the vehicle. I approached the vehicle from the front.

02:58PM 13 Obviously we were behind Kiana. So I approached on foot from
02:58PM 14 the front -- towards the front of the vehicle. I observed
02:58PM 15 Mr. Cummings as the sole occupant and operator of the vehicle.
02:58PM 16 I approached the vehicle from the passenger side.

02:58PM 17 My partner, Officer Toma Asuega-Stark, approached from
02:58PM 18 the driver's side. As Officer Asuega-Stark informed
02:58PM 19 Mr. Cummings that he was under arrest and ordered him to get
02:58PM 20 out of the vehicle, I, for officer safety purposes, opened the
02:59PM 21 passenger door of the vehicle and turned the ignition off,
02:59PM 22 taking out the keys, rendering the vehicle inoperable so he
02:59PM 23 would not take off and bang any of my partners. And then from
02:59PM 24 there I gave the keys to Detective Satterfield.

02:59PM 25 Q At any time during this operation, did you, besides taking

02:59PM 1 the keys, turning off the ignition and taking the keys, did you
02:59PM 2 or any other officer enter the truck or alter the contents of
02:59PM 3 the truck in any way?

02:59PM 4 A No.

02:59PM 5 Q Did you see anything that appeared to be illegal drugs in
02:59PM 6 the truck?

02:59PM 7 A No.

02:59PM 8 Q There was no search of the truck at that time?

03:00PM 9 A No.

03:00PM 10 Q Do you know why not?

03:00PM 11 A Yeah. So we were primarily investigating an electronic
03:00PM 12 enticement of a child type investigation, so there would be no
03:00PM 13 reason for us to be looking for anything else, including
03:00PM 14 narcotics or anything like that. It's just what we were
03:00PM 15 assigned for and that's it.

03:00PM 16 Q So you personally observed Mr. Cummings being taken into
03:00PM 17 custody?

03:00PM 18 A Yes.

03:00PM 19 Q Do you see him in the courtroom today?

03:00PM 20 A Yes.

03:00PM 21 Q Let me back up.

03:00PM 22 When you personally observed him that night, did you
03:00PM 23 get a good look at him?

03:00PM 24 A Yes.

03:00PM 25 Q Even though it was dark?

03:00PM 1 A Yes.

03:00PM 2 Q You were close enough to see him well?

03:00PM 3 A Yes.

03:00PM 4 Q Do you see him here today?

03:00PM 5 A Yes.

03:00PM 6 Q Could you describe generally where he's sitting and

03:00PM 7 briefly describe an article of clothing?

03:00PM 8 A He's seated right behind you wearing a blue polo shirt.

03:00PM 9 Q When Mr. Cummings was arrested, was there

03:01PM 10 anything noteworthy or out of the ordinary about the arrest

03:01PM 11 itself?

03:01PM 12 A No.

03:01PM 13 Q Any problems?

03:01PM 14 A No.

03:01PM 15 Q Would you say in your training and experience that the

03:01PM 16 arrest was according to standard police practices and

03:01PM 17 procedures?

03:01PM 18 A Yes.

03:01PM 19 Q Was he read his rights?

03:01PM 20 A Yes.

03:01PM 21 Q Did law enforcement record or document the arrest somehow?

03:01PM 22 A Yes.

03:01PM 23 Q How?

03:01PM 24 A Utilizing -- for this operation we were issued standalone

03:01PM 25 burner phones specific to Operation Keiki Shield. So an

03:01PM 1 officer recorded this -- pretty much the entire arrest

03:01PM 2 utilizing one of these devices.

03:01PM 3 Q Did any officers have body cams or recorded on body cam?

03:01PM 4 A No.

03:01PM 5 Q Have you since watched the video recordings of the arrest?

03:02PM 6 A Yes.

03:02PM 7 Q How many are there?

03:02PM 8 A Two.

03:02PM 9 Q Are there any more than two to your knowledge?

03:02PM 10 A Not that I know of.

03:02PM 11 Q Could you very briefly describe what the two videos show

03:02PM 12 that you're aware of?

03:02PM 13 A The first video would be Officer Asuega-Stark mas well as
03:02PM 14 other assisting officers placing Mr. Cummings in handcuffs, and
03:02PM 15 the second video is, I believe it's an overall view of the
03:02PM 16 vehicle that he arrived in, the white Toyota Tacoma.

03:02PM 17 MS. OLSON: Your Honor, at this time I would like to
03:02PM 18 publish Exhibits 5 and 6 for the jury and they are the two
03:02PM 19 videos of the arrest that the witness just described that have
03:03PM 20 been previously admitted into evidence by the Court.

03:03PM 21 THE COURT: Yes. Both of those exhibits are admitted.
03:03PM 22 You may publish, but before you do so, I have two questions.

03:03PM 23 Officer, you mentioned that you affect arrests
03:03PM 24 pursuant to PC.

03:03PM 25 What is PC?

03:03PM 1 THE WITNESS: Probable cause.

03:03PM 2 THE COURT: Also you mentioned that this officer
03:03PM 3 posing as Kiana was standing on the sidewalk near this
03:03PM 4 intersection of Kilohana.

03:03PM 5 THE WITNESS: Yes.

03:03PM 6 THE COURT: What was she wearing?

03:03PM 7 THE WITNESS: I believe she was wearing a sweatshirt.

03:03PM 8 THE COURT: What else? You were providing a
03:03PM 9 description of the officers, but you didn't describe her.

03:03PM 10 THE WITNESS: I believe she was wearing a sweatshirt
03:03PM 11 and pants.

03:03PM 12 THE COURT: Anything else more specific you can recall
03:03PM 13 about her attire that evening?

03:03PM 14 THE WITNESS: No.

03:03PM 15 THE COURT: Thank you. You may play Exhibits 5 or 6
03:03PM 16 when you're ready.

03:03PM 17 BY MS. OLSON:

03:03PM 18 Q Could I just ask one quick question just to be very clear?

03:03PM 19 Officer Ariga you're talking about who played Kiana,
03:04PM 20 her photograph was used in the profile picture in this
03:04PM 21 operation; is that correct?

03:04PM 22 A Yes.

03:04PM 23 MS. OLSON: Let's please play the video. The order
03:04PM 24 doesn't matter. If we could start with Number 5, please,
03:04PM 25 Exhibit 5.

03:04PM 1 (The video was played for the jury.)

03:07PM 2 MS. OLSON: Let the record reflect the video is over.

03:07PM 3 That was Exhibit 5.

03:07PM 4 BY MS. OLSON:

03:07PM 5 Q Officer, did you see yourself in that video?

03:07PM 6 A Yes.

03:08PM 7 Q What were you doing?

03:08PM 8 A Walking around the vehicle --

03:08PM 9 Q So --

03:08PM 10 A -- assisting whoever I can assist, yeah.

03:08PM 11 Q Does this video seem accurate to you having been there?

03:08PM 12 A Yes.

03:08PM 13 Q So it fairly and accurately matches your recollection of

03:08PM 14 the events?

03:08PM 15 A Yes.

03:08PM 16 MS. OLSON: Could we please publish and play

03:08PM 17 Exhibit 6, another video?

03:08PM 18 THE COURT: You may.

03:08PM 19 (The video was played for the jury.)

03:08PM 20 BY MS. OLSON:

03:09PM 21 Q Did that video fairly and accurately represent what you

03:09PM 22 know of to have occurred that night?

03:09PM 23 A Yes.

03:09PM 24 Q What was visible very briefly to officers that you recall

03:09PM 25 in the truck from standing outside the truck?

03:09PM 1 A From the video you can see that there's a cellphone, a
03:09PM 2 black colored cellphone in the center console area of the
03:09PM 3 vehicle.

03:09PM 4 Q At any time with your interactions with Mr. Cummings that
03:09PM 5 night, did he say anything substantive to you about the case?

03:09PM 6 A No.

03:09PM 7 Q Did you have any more to do with this case?

03:09PM 8 A No.

03:09PM 9 MS. OLSON: Thank you. No more questions.

03:09PM 10 THE COURT: Mr. Mottl, cross-examination when you're
03:09PM 11 ready.

03:09PM 12 MR. MOTTL: Yes.

03:09PM 13 CROSS-EXAMINATION

03:09PM 14 BY MR. MOTTL:

03:09PM 15 Q Good afternoon, Officer Kauhaahaa. I just have a few
03:10PM 16 questions.

03:10PM 17 I have -- basically I have something here that says
03:10PM 18 there was something referred to as a rover team. You were part
03:10PM 19 of a rover team?

03:10PM 20 A I was part of the surveillance and takedown team.

03:10PM 21 Q Okay. That makes sense.

03:10PM 22 And Sergeant Bates?

03:10PM 23 A Yes.

03:10PM 24 Q He was the head of the team?

03:10PM 25 A Yes.

03:10PM 1 Q And you -- I think there were three other individuals

03:10PM 2 working with you?

03:10PM 3 A Yes. I cannot say it was just three, but it was a group

03:10PM 4 of us for sure.

03:10PM 5 Q Thank you.

03:10PM 6 The events you just testified to were March 15th or on

03:10PM 7 March 15th, 2020; is that correct?

03:10PM 8 A Yes.

03:10PM 9 Q Do you recall participating in any other similar arrests

03:11PM 10 on that date?

03:11PM 11 A I believe so.

03:11PM 12 MS. OLSON: Objection, relevance.

03:11PM 13 THE COURT: I'm not sure where you're going with this.

03:11PM 14 We've been down this road already this afternoon, sir.

03:11PM 15 Where is this going?

03:11PM 16 MR. MOTTL: Well, not much more than this, although

03:11PM 17 the officer responded yes and that may be an inconsistency with

03:11PM 18 the last witness. I just have a few more questions.

03:11PM 19 THE COURT: I'll give you a very short leash.

03:11PM 20 And by the way, he did not say yes. His response was,

03:11PM 21 "I believe so."

03:11PM 22 The objection is overruled for now.

03:11PM 23 MR. MOTTL: I think probably -- well, I have no other

03:11PM 24 questions. Thank you.

03:12PM 25 THE COURT: Redirect?

03:12PM 1 MS. OLSON: No redirect. Thank you.

03:12PM 2 THE COURT: Officer, you may step down.

03:12PM 3 Next witness.

03:12PM 4 MS. PERLMUTTER: Yes, Your Honor. At this time before

03:12PM 5 calling our next witness, the government would seek to read

03:12PM 6 into the record stipulation of evidence in Exhibit Number 19.

03:12PM 7 THE COURT: Number 19?

03:12PM 8 MS. PERLMUTTER: Yes.

03:12PM 9 THE COURT: Any objection, Mr. Mottl?

03:12PM 10 MR. MOTTLE: No objection, Your Honor.

03:12PM 11 THE COURT: Counsel, did you wish me to do that or did

03:12PM 12 you plan to do it?

03:12PM 13 MS. PERLMUTTER: I can do that, Your Honor.

03:12PM 14 THE COURT: Go ahead.

03:12PM 15 MS. PERLMUTTER: Would it be appropriate to publish?

03:12PM 16 THE COURT: Sure. Without objection, Government's

03:12PM 17 Exhibit 19 is admitted.

03:12PM 18 (Government's Exhibit 19 was received in evidence.)

03:12PM 19 MS. PERLMUTTER: If you could please turn to page 2.

03:12PM 20 "The United States of America and Defendant, Lyle

03:13PM 21 Rikio Cummings, by and through their respective attorneys,

03:13PM 22 hereby enter into the following stipulation, and agree to the

03:13PM 23 following:

03:13PM 24 "On March 16, 2020, the Maui Police Department

03:13PM 25 searched a white Toyota truck with license plate number LAJ777,

03:13PM 1 and seized from the truck a cellular telephone (an iPhone 7).
03:13PM 2 The parties do not dispute the chain of custody for the
03:13PM 3 cellular telephone, which is presently stored in the Homeland
03:13PM 4 Security Investigation, HSI, evidence vault in Honolulu,
03:13PM 5 Hawaii."

03:13PM 6 THE COURT: For the jury, as I mentioned yesterday,
03:13PM 7 there are a number of ways in which evidence in this case may
03:13PM 8 come in. One of those ways is through the stipulation of the
03:13PM 9 attorneys in this case.

03:13PM 10 You just heard one of those examples of such a
03:13PM 11 stipulation where the parties agree or stipulate to certain
03:14PM 12 facts. It means that they agree that these facts are true.
03:14PM 13 You should therefore treat these facts as having been
03:14PM 14 conclusively proved.

03:14PM 15 You may proceed when ready.

03:14PM 16 MS. PERLMUTTER: Your Honor, at this time the
03:14PM 17 government calls Maui Police Department Detective Matthew
03:14PM 18 Bigoss.

03:14PM 19 THE CLERK: Please raise your right hand.

03:14PM 20 MATTHEW BIGOSS,
03:14PM 21 called as a witness, having been first duly sworn, was examined
03:14PM 22 and testified as follows:

03:14PM 23 THE CLERK: Please state your full name, spelling your
03:14PM 24 last name for the record.

03:14PM 25 THE WITNESS: My name is Matthew Bigoss. First name

03:15PM 1 Matthew, M-A-T-T-H-E-W, last name is Bigoss, B like boy,
03:15PM 2 I-G-O-S-S.

03:15PM 3 DIRECT EXAMINATION

03:15PM 4 BY MS. PERLMUTTER:

03:15PM 5 Q Good afternoon, Detective Bigoss.

03:15PM 6 Could you please tell the jury where you are currently
03:15PM 7 employed?

03:15PM 8 A Good afternoon. I'm a detective with the Maui Police
03:15PM 9 Department.

03:15PM 10 Q As a detective, what are your responsibilities at the Maui
03:15PM 11 Police Department?

03:15PM 12 A Investigation of felony crimes with a specialty in cyber
03:15PM 13 crimes and digital forensics.

03:15PM 14 Q How long have you been with the Maui Police Department?

03:15PM 15 A Just short of 19 years.

03:15PM 16 Q Has there been a shorter length of time within the Maui
03:15PM 17 Police Department that you've been involved in either cyber
03:15PM 18 crimes or digital type crimes?

03:15PM 19 A Yes. I've been assigned to that for six years.

03:16PM 20 Q Could you explain to the jury what is meant by a cyber
03:16PM 21 crime or a digital crime?

03:16PM 22 A So cyber crime we're talking about crimes that are
03:16PM 23 involving the internet as a component or electronic evidence,
03:16PM 24 electronic devices like computers, cellphones, that sort of
03:16PM 25 thing.

03:16PM 1 Q And in your role as a detective within the cyber crimes
03:16PM 2 specialty, what responsibilities are included in that type of
03:16PM 3 role?

03:16PM 4 A I assist other detectives with their cases by conducting
03:16PM 5 examinations of -- forensic examinations of cellphones and
03:16PM 6 computers other electronic devices.

03:16PM 7 I also handle investigation of crimes that are
03:16PM 8 occurring over the internet to include extortion-type schemes,
03:16PM 9 threatening and internet crimes against children or ICAC cases.

03:16PM 10 Q Are you involved in undercover operations as part of this
03:17PM 11 role?

03:17PM 12 A Yes, I am.

03:17PM 13 Q Are some of those undercover operations occurring at least
03:17PM 14 partially online?

03:17PM 15 A Yes.

03:17PM 16 Q What do you mean -- what do I mean by online in your view?

03:17PM 17 A Something that's involving the internet. Social media,
03:17PM 18 applications, that sort of thing.

03:17PM 19 Q You examine digital devices; is that right?

03:17PM 20 A That's correct.

03:17PM 21 Q Could you explain to the jury what's included in the
03:17PM 22 category of digital devices?

03:17PM 23 A Basically anything that has some type of electronic
03:17PM 24 component to it, electronic storage, so phones, computers,
03:17PM 25 internet connected like TVs, refrigerators, anything -- even

03:17PM 1 cars. Anything that has a communications or file storage
03:17PM 2 capabilities.

03:17PM 3 Q I'd like to focus a little bit on your background
03:17PM 4 regarding digital device, I'll use that term, training.

03:18PM 5 Could you describe for the jury the type of training
03:18PM 6 that you've received in this area?

03:18PM 7 A Sure. I've received hundreds of hours of training from
03:18PM 8 multiple different training and certification entities in
03:18PM 9 cellphones, computers, including from the International
03:18PM 10 Association of Computer Investigative Specialists, the United
03:18PM 11 States Secret Service National Computer Forensics Institute and
03:18PM 12 a couple of some vendor focused type of training from
03:18PM 13 Cellebrite, MSAB and a couple other providers.

03:18PM 14 Q When you say vendor training and you referred specifically
03:18PM 15 to Cellebrite, could you explain what you mean by that?

03:18PM 16 A Vendor training is training that's offered by a company
03:18PM 17 that provides, I guess, specific digital forensic tools for
03:18PM 18 examinations, so Cellebrite is one of those companies.

03:18PM 19 Q What's a forensic digital tool?

03:18PM 20 Just so you know, any time you use a phrase that
03:19PM 21 sounds a bit technical, I'm going to stop you and ask you to
03:19PM 22 describe that.

03:19PM 23 A Okay. When I talk about a digital forensics tool, it's
03:19PM 24 basically a program that allows us to examine data, electronic
03:19PM 25 evidence from a source, usually like a cellphone or computer,

03:19PM 1 in a manner that doesn't cause any kind of changes or anything
03:19PM 2 like that to the data set.

03:19PM 3 Q You mentioned you've been doing this cyber work as a
03:19PM 4 detective for about six years?

03:19PM 5 A That's correct.

03:19PM 6 Q Have you been examining digital devices longer than that?

03:19PM 7 A Yes. So prior to my assignment as a detective, I worked
03:19PM 8 in our crime reduction unit in our vice narcotics section where
03:19PM 9 I did a lot of work with cellular phones, phone records and
03:19PM 10 cases where phones were a major component, conspiracy type
03:19PM 11 cases.

03:19PM 12 Q Do you have any specific certifications related to
03:20PM 13 cellular phones or cellphones?

03:20PM 14 A I do. I have a certification as a mobile forensic
03:20PM 15 examiner from the International Association of Computer
03:20PM 16 Investigative Specialists.

03:20PM 17 I have a certification from Cellebrite, a couple other
03:20PM 18 certifications from the Secret Service National Computer
03:20PM 19 Forensics Institute.

03:20PM 20 Q What's your educational background, Detective Bigoss?

03:20PM 21 A I completed college. I have a bachelor's from the
03:20PM 22 University of Maryland.

03:20PM 23 Q If you could ballpark for the jury the number of
03:20PM 24 examinations of cellphones that you've done at Maui Police
03:20PM 25 Department, could you explain to them approximately how many?

03:20PM 1 A Over 200.

03:20PM 2 Q And what about -- and that's of cellphones?

03:21PM 3 A Yes.

03:21PM 4 Q And could you describe what that type of exam would
03:21PM 5 entail?

03:21PM 6 A Well, generally we have a couple of different levels to
03:21PM 7 which we examine a device and it's going to be driven by our
03:21PM 8 investigation. Some examinations are a very surface level kind
03:21PM 9 of thing where we're getting data and then we're providing it
03:21PM 10 to an investigator for them to analyze and fit within a fact
03:21PM 11 pattern of their crime.

03:21PM 12 Some investigations dive a lot deeper and we're
03:21PM 13 actually going into the raw databases and deep into the data
03:21PM 14 that's on the device to try and locate like, for example,
03:21PM 15 deleted messages or deleted photographs, or stuff that's
03:21PM 16 encrypted and we're trying to get past the encryption.

03:21PM 17 Q Are you familiar with the term "extraction" --

03:21PM 18 A Yes.

03:21PM 19 Q -- with respect to your job?

03:21PM 20 And specifically a cellphone extraction?

03:21PM 21 A Yes.

03:21PM 22 Q Could you describe what that is?

03:21PM 23 A That's essentially the term that we use for removing --
03:22PM 24 for taking the data that's on the phone and creating a copy of
03:22PM 25 it for evidentiary purposes.

03:22PM 1 Q Is an extraction, that copy that you must mentioned, does
03:22PM 2 that include every single piece of data on the phone?

03:22PM 3 A No, not necessarily. Certain limitations for file systems
03:22PM 4 and operating systems of a phone may determine that we're not
03:22PM 5 going to get every single piece of data off a device.

03:22PM 6 Q When you make an extraction, is that -- you called it a
03:22PM 7 copy. Is that a fair way to call it for purposes of this
03:22PM 8 examination?

03:22PM 9 A Yes, yes.

03:22PM 10 Q Is that copy an accurate reflection of the information
03:22PM 11 that's on the phone itself?

03:22PM 12 A Yes, it is.

03:22PM 13 Q And how do you know that?

03:22PM 14 A So we have a process called file hashing and to try and
03:22PM 15 keep it as simple as possible to understand, it's basically
03:22PM 16 it's a mathematical process by which you're verifying one set
03:23PM 17 of data matches another set of data, so it's almost like a
03:23PM 18 digital fingerprint. So if we know what the hash is for the
03:23PM 19 data on phone, we know what the hash is for the copy as long as
03:23PM 20 it's a match. That's how we're verifying that the copy is true
03:23PM 21 and correct.

03:23PM 22 Q For the cellphone extractions or copies, how many,
03:23PM 23 approximately, have you done of iPhones specifically?

03:23PM 24 A Specific to iPhones, over 100.

03:23PM 25 MS. PERLMUTTER: At this time the government would

03:23PM 1 move to qualify Detective Bigoss as an expert in forensic
03:23PM 2 cellphone extractions and analysis pursuant to the Federal
03:23PM 3 Rules of Evidence.

03:23PM 4 THE COURT: Mr. Mottl?

03:23PM 5 MR. MOTTL: No objection, Your Honor.

03:23PM 6 THE COURT: Without objection, Officer Bigoss is
03:23PM 7 permitted to testify within the meaning of Federal Rule of
03:23PM 8 Evidence 702 in the field of forensic cellphone extraction and
03:24PM 9 analysis.

03:24PM 10 BY MS. PERLMUTTER:

03:24PM 11 Q Detective Bigoss, what was your involvement in the Lyle
03:24PM 12 Cummings case?

03:24PM 13 A For the Lyle Cummings case, during the operation itself I
03:24PM 14 was kind of like the quarterback of the operation, so to speak.
03:24PM 15 I organized the personnel who were involved, the different
03:24PM 16 teams. Basically managed everything during the operation.

03:24PM 17 Q Was that operation referred to as Operation Keiki Shield?

03:24PM 18 A Yes.

03:24PM 19 Q Besides being the quarterback in your own words, what else
03:24PM 20 did you do in the case?

03:24PM 21 A Additionally I did the forensic examination of the
03:24PM 22 cellphone that was recovered from a search warrant in the
03:24PM 23 pickup truck.

03:24PM 24 Q Why did you conduct an examination of the cellphone
03:24PM 25 recovered in the search warrant?

03:24PM 1 A To look for any type of information of an evidentiary

03:25PM 2 nature for the enticement investigation.

03:25PM 3 Q Did you also have an involvement regarding controlled

03:25PM 4 substances in this case.

03:25PM 5 A Oh, yes, I did.

03:25PM 6 Q And what did you do regarding that, just generally?

03:25PM 7 A I transported the controlled substances from Maui to

03:25PM 8 Honolulu to transfer to custody over here.

03:25PM 9 Q And another word for controlled substances, could I use

03:25PM 10 the word "drugs"?

03:25PM 11 A Yes.

03:25PM 12 Q At this time, if you could turn in your binder to

03:25PM 13 Exhibit 17 and there will be Tabs A through F, and take some

03:25PM 14 time to please page through that. Please just let me know when

03:26PM 15 you have familiarized yourself with that exhibit.

03:26PM 16 A Okay.

03:27PM 17 Q Could you describe for the jury what Exhibit 17 is?

03:27PM 18 A Exhibit 17 is information from the forensic examination

03:27PM 19 report that I did for the cellphone.

03:27PM 20 Q And in creating this forensic examination report, what

03:27PM 21 type of analysis tools did you use?

03:27PM 22 A For this examination, I used multiple tools, a couple of

03:27PM 23 different tools to assist with acquisition or extraction of the

03:27PM 24 data, and then two or three different analysis tools to review

03:27PM 25 and verify the data.

03:27PM 1 Q And when I say tool, am I referring to something physical

03:27PM 2 like a hammer or what --

03:28PM 3 A No. Sorry. It's software. It's all software based.

03:28PM 4 Q And what steps did you take in this case to get the iPhone

03:28PM 5 ready for that analysis?

03:28PM 6 A So in this instance the iPhone was susceptible to a

03:28PM 7 hardware exploit. It's referred to as a checkra1n or a checkm8

03:28PM 8 (checkmate phonetic), which in order to take advantage of it

03:28PM 9 you needed to put the phone into what's called a DFU mode,

03:28PM 10 which is basically like a diagnostic mode outside of the

03:28PM 11 operating system.

03:28PM 12 Q Did you have the physical iPhone with you?

03:28PM 13 A Yes.

03:28PM 14 Q And do you need that physical iPhone in order to complete

03:28PM 15 an extraction of the data?

03:28PM 16 A Yes.

03:28PM 17 Q Do you need that physical iPhone in order to then analyze

03:28PM 18 the data from the extraction?

03:28PM 19 A No. So once the extraction is complete, we don't work on

03:28PM 20 the actual device. We are working on the copy of the data that

03:29PM 21 we've created.

03:29PM 22 Q And so what is Exhibit 17 a product of?

03:29PM 23 A So Exhibit 17 is a product of the data that was extracted

03:29PM 24 from the phone and then the report that was made using the

03:29PM 25 tools after the fact to conduct the analysis.

03:29PM 1 Q In order to get into the iPhone, did you have pass code
03:29PM 2 information?

03:29PM 3 A Yes, we had the pass code.

03:29PM 4 Q And is Exhibit 17 an accurate reflection of some of the
03:29PM 5 information and data in that iPhone that was seized from
03:29PM 6 Mr. Cummings's truck?

03:29PM 7 A Yes, it is.

03:29PM 8 MS. PERLMUTTER: At this time, Your Honor, I'd move to
03:29PM 9 admit Exhibit 17.

03:29PM 10 THE COURT: Mr. Mottl?

03:29PM 11 MR. MOTTL: No objections, Your Honor.

03:29PM 12 THE COURT: All right.

03:29PM 13 MS. PERLMUTTER: With your permission, Your Honor,
03:29PM 14 could we please publish Exhibit 17A?

03:29PM 15 THE COURT: So first of all, without objection,
03:29PM 16 Exhibit 17, which is in six parts, 17A through 17F, is each
03:29PM 17 admitted.

03:29PM 18 You may publish any part of it when you wish.

03:29PM 19 MS. PERLMUTTER: Thank you.

03:29PM 20 (Government's Exhibit 17A - 17F were received in evidence.)

03:30PM 21 MS. PERLMUTTER: Please publish 17A.

03:30PM 22 BY MS. PERLMUTTER:

03:30PM 23 Q Detective Bigoss, could you please explain to the jury
03:30PM 24 what generally this page shows?

03:30PM 25 A This page is showing just some general information about

03:30PM 1 the phone; the Apple ID that was associated to it, the phone's
03:30PM 2 name, telephone number and some other numbers on there that are
03:30PM 3 like serial numbers or subscriber numbers used by the cellphone
03:30PM 4 provider.

03:30PM 5 MS. PERLMUTTER: Specifically I'd like to turn
03:30PM 6 under -- in the blue part of the exhibit where it says, "File
03:30PM 7 System," line one. After that it says "Apple ID."

03:30PM 8 Could you please highlight that section, Ms. Unten?

03:30PM 9 Thank you.

03:30PM 10 BY MS. PERLMUTTER:

03:30PM 11 Q What is an Apple ID?

03:30PM 12 A So an Apple ID is, basically it's an account with Apple
03:30PM 13 that a person creates to use with Apple devices.

03:30PM 14 Q And what is the information that you learned during your
03:31PM 15 analysis about the Apple ID connected to this iPhone?

03:31PM 16 A The Apple ID for this iPhone was Duckfat34@me.com, which
03:31PM 17 is the email address, and that's one of the ways that Apple
03:31PM 18 associates an ID to an account is through the email address.

03:31PM 19 Q Who creates the specific Apple ID in a particular account?

03:31PM 20 A The user.

03:31PM 21 Q Two lines after that it says, "Owner Name."

03:31PM 22 What information did you learn about the owner name
03:31PM 23 here?

03:31PM 24 A So the owner's name for the device is Lyle's iPhone.

03:31PM 25 Q And how is that created?

03:31PM 1 A When the iPhone is initially set up, as it's going through
03:31PM 2 the setup, the phone will set a default name for it and it's
03:31PM 3 pulling that information from the Apple ID. A user can
03:31PM 4 customize it later, but the default name is usually going to be
03:32PM 5 what's pulled from Apple ID.

03:32PM 6 MS. PERLMUTTER: Ms. Unten, if you could please pull
03:32PM 7 up the next line after "Advertising ID."

03:32PM 8 BY MS. PERLMUTTER:

03:32PM 9 Q Detective Bigoss, you'll see that first line it says,
03:32PM 10 "Last used MSISDN."

03:32PM 11 Could you explain to the jury what that is and what
03:32PM 12 information is included with that?

03:32PM 13 A That is the telephone number that's associated to the
03:32PM 14 device.

03:32PM 15 Q And then what --

03:32PM 16 MS. PERLMUTTER: Ms. Unten, there's one more point on
03:32PM 17 this page. It's about halfway through. If you could blow up
03:32PM 18 the like sort of the mid part of the page.

03:32PM 19 BY MS. PERLMUTTER:

03:32PM 20 Q About midway through this page in Exhibit 17A there's a
03:32PM 21 bolded notation of tethering and then after that it says, "Last
03:33PM 22 activation time."

03:33PM 23 Just for clarification, could you please explain to
03:33PM 24 the jury what the significance of that is?

03:33PM 25 A That's when the device is plugged into a computer, so that

03:33PM 1 would be the last time that the device was plugged into a
03:33PM 2 computer.

03:33PM 3 Q So that's not representative of the last time the device
03:33PM 4 was used.

03:33PM 5 A No.

03:33PM 6 Q If you could please turn to Exhibit 17B.

03:33PM 7 Detective Bigoss, could you describe for the jury what
03:33PM 8 they're viewing on this particular page?

03:33PM 9 A This page has contact information that was received on the
03:33PM 10 device.

03:33PM 11 Q In the upper left-hand corner there's a notation that
03:33PM 12 says, "Contacts" with a parenthetical three.

03:33PM 13 What does that mean?

03:33PM 14 A So it's saying that it had three instances of this contact
03:33PM 15 being pulled from different storage locations on the device.

03:34PM 16 Q And how does contact information generally get saved in an
03:34PM 17 iPhone?

03:34PM 18 A Generally it's going to be saved by the user.

03:34PM 19 Q Let's talk specifically about the first entry.

03:34PM 20 MS. PERLMUTTER: If we could blow that first section
03:34PM 21 up.

03:34PM 22 Thank you.

03:34PM 23 BY MS. PERLMUTTER:

03:34PM 24 Q Could you describe for the jury on the left-hand side what
03:34PM 25 information you were able to learn about the contacts that were

03:34PM 1 in the phone.

03:34PM 2 A Looking at the left-hand side, the name of the contact is
03:34PM 3 Kiana from Skout.

03:34PM 4 Q And who would have created this notation Kiana?

03:34PM 5 A That would have been created by the user.

03:34PM 6 Q And then where was --

03:34PM 7 THE COURT: Could you just wait one second?

03:34PM 8 MS. PERLMUTTER: I'm sorry.

03:34PM 9 THE COURT: There's a cellphone ringing.

03:35PM 10 Is that your phone, Mr. Mottl?

03:35PM 11 MR. MOTTL: Yeah. I'm sorry I thought I left it in
03:35PM 12 the car. My apologies.

03:35PM 13 THE COURT: Please ensure that your devices, if you
03:35PM 14 bring them into court, are turned off during the proceeding.
03:35PM 15 Thank you.

03:35PM 16 Apologize, Counsel. You may continue.

03:35PM 17 MS. PERLMUTTER: Thank you, Your Honor.

03:35PM 18 BY MS. PERLMUTTER:

03:35PM 19 Q We were talking about the left-hand side, Detective
03:35PM 20 Bigoss, of this contact information, and we had just talked
03:35PM 21 about the name and how that was stored.

03:35PM 22 There's another piece of data under the name. It's
03:35PM 23 called "Source File." Is there something significant in there
03:35PM 24 about where this information was kept on the phone?

03:36PM 25 A Yes. So in this entry we're looking at here, that's the

03:36PM 1 file where the information was parsed from, so this is the
03:36PM 2 interaction C database wall file, which --

03:36PM 3 Q I see halfway about through that first line after "Source
03:36PM 4 File" it says, "Address Book."

03:36PM 5 What does that mean?

03:36PM 6 A That's associated to the iPhone's address book the
03:36PM 7 contacts.

03:36PM 8 Q What about the middle section, the time stamp? Could you
03:36PM 9 describe the significance of that information that was
03:36PM 10 collected from the iPhone?

03:36PM 11 A So the time stamps that are listed there are right about
03:36PM 12 the same time as the chat was started with our undercover
03:36PM 13 officer.

03:36PM 14 Q And why are there two entries? There's the created entry
03:36PM 15 and then after that there's a modified entry?

03:36PM 16 A So basically the created is when it's first created, and
03:37PM 17 modified is if additional information is added or changed, or
03:37PM 18 anything like that to that contact info.

03:37PM 19 Q Besides the name, was there information included in the
03:37PM 20 contact in the third portion of this section?

03:37PM 21 A Yes. So there's a mobile telephone number there, which
03:37PM 22 was our undercover officer's undercover phone number.

03:37PM 23 Q And how would that mobile telephone number get saved in
03:37PM 24 the iPhone?

03:37PM 25 A That would have been -- that would have had to have been

03:37PM 1 by the user when the contact was saved.

03:37PM 2 Q Under that mobile telephone number there's an identifier
03:37PM 3 with another serious -- series of numbers -- excuse me. What
03:37PM 4 does that signify?

03:37PM 5 A That's the same. That's our undercover phone number
03:37PM 6 without the area code, and it has the star code for hiding
03:38PM 7 caller -- blocking your number from a caller ID. That's star
03:38PM 8 67 that you see in the beginning.

03:38PM 9 Q How would that have gotten saved in the iPhone?

03:38PM 10 A That would have had to have been saved by the user or it
03:38PM 11 could have been brought in through dialing with the star 67 in
03:38PM 12 front of it.

03:38PM 13 MS. PERLMUTTER: If you could please zoom back to the
03:38PM 14 exhibit, Ms. Unten. Thank you.

03:38PM 15 BY MS. PERLMUTTER:

03:38PM 16 Q In the second section I want to draw your attention to the
03:38PM 17 right-hand side of this contact. On the bottom portion where
03:38PM 18 it says "Notes," could you describe to the jury the
03:38PM 19 significance of those notes and that information?

03:38PM 20 A So the information displayed there is an interaction count
03:38PM 21 with that number, so it's basically the number of incoming
03:38PM 22 contacts and outgoing contacts. So the number of times that
03:39PM 23 number called or messaged the device or the number of times
03:39PM 24 that device called or messaged that number.

03:39PM 25 Q And could those have been also text messages?

03:39PM 1 A Yes, messages or calls.

03:39PM 2 Q Thank you.

03:39PM 3 And why are there three different contacts listed on
03:39PM 4 this sheet?

03:39PM 5 A The contact information was pulled from three different
03:39PM 6 sources on the phone, so that's one of the features of our
03:39PM 7 tools is if they find the information in multiple sources, it
03:39PM 8 would present every source where it's finding it.

03:39PM 9 Q If you could turn to Exhibit 17C, please.

03:39PM 10 Could you describe for the jury what information is
03:39PM 11 included in Exhibit 17C?

03:39PM 12 A Yes. 17C is providing a log of application activity, so
03:39PM 13 basically when something was happening with the application,
03:40PM 14 and this is for the Skout application.

03:40PM 15 Q And in your analysis of this phone, did you look
03:40PM 16 specifically for Skout activity?

03:40PM 17 A Yes, I did.

03:40PM 18 Q And why did you look specifically for Skout activity?

03:40PM 19 A Because the investigation had initiated on the Skout
03:40PM 20 platform.

03:40PM 21 Q So was that something that could be relevant to your
03:40PM 22 investigation?

03:40PM 23 A Yes.

03:40PM 24 Q And did you find Skout activity?

03:40PM 25 A Yes, I did.

03:40PM 1 Q Is all of the activity on this first page, for example,
03:40PM 2 specifically related to the investigation of Operation Keiki
03:40PM 3 Shield?

03:40PM 4 A No, not necessarily. The information we're seeing here is
03:40PM 5 all of the activity for this application that was logged from
03:40PM 6 the 13th through the 16th of March 2020.

03:40PM 7 Q I'm going to ask you a bit more specific, but first I'd
03:40PM 8 like to turn to page 2 of this exhibit.

03:41PM 9 Is there a place on page 2 of 17C where you've been
03:41PM 10 able to identify when approximately the undercover Kiana chats
03:41PM 11 in Skout with Mr. Cummings started to take place?

03:41PM 12 A Yes. So looking on this page, it's approximately number
03:41PM 13 14 or number 15 on the list.

03:41PM 14 MS. PERLMUTTER: Could you please blow up those two.
03:41PM 15 Thank you.

03:41PM 16 BY MS. PERLMUTTER:

03:41PM 17 Q Why do you say approximately number 14 or number 15?

03:41PM 18 A So this log is tracking the usage of this application.
03:41PM 19 It's not necessarily tracking specific functions of the
03:41PM 20 application, it's just saying hey, this thing is being used
03:41PM 21 and that's what it's tracking there. So this one, we keyed on
03:41PM 22 this because it's during the time frame when the first messages
03:41PM 23 were received by our undercover on Skout.

03:41PM 24 Q And in looking at the start time, for example, on number
03:42PM 25 14, after 3/13/2020 it says "13:43:31 UTC-10."

03:42PM 1 What does that mean?

03:42PM 2 A That's the 24-hour notation for the time, so that's 1:43

03:42PM 3 p.m., and the UTC minus 10 is Hawaii time, Hawaii standard

03:42PM 4 time, so that's saying that basically starting at 1:43 p.m. in

03:42PM 5 Hawaii time.

03:42PM 6 Q Are you able to view any content related to Skout in your

03:42PM 7 analysis or extraction of the iPhone?

03:42PM 8 A No.

03:42PM 9 Q And why not?

03:42PM 10 A The account appeared to have been signed out, so there was

03:42PM 11 no account signed in to the Skout application when we recovered

03:42PM 12 the phone.

03:42PM 13 Q If you could turn to page 9 of this exhibit.

03:43PM 14 On page 9 of 17C, were you able to determine through

03:43PM 15 your analysis approximately the end time of the undercover's

03:43PM 16 conversations with Skout and Mr. Cummings before they switched

03:43PM 17 to text messaging?

03:43PM 18 A Yes. The approximate end time is somewhere between like

03:43PM 19 90 and 91.

03:43PM 20 Q And you explained this on the front end, but on the back

03:43PM 21 end there appears to be additional Skout entries.

03:43PM 22 What does that signify to you?

03:43PM 23 A That signifies that the app is still being used after

03:43PM 24 these entries.

03:43PM 25 Q By the user.

03:43PM 1 A Correct.

03:43PM 2 Q Of the phone?

03:43PM 3 A Correct.

03:43PM 4 Q If you could turn to Exhibit 17D, please.

03:44PM 5 Detective Bigoss, please explain what this item of

03:44PM 6 information --

03:44PM 7 A So what we're looking at here is a search through using

03:44PM 8 the Apple Maps application, searched for Kilohana Drive, which

03:44PM 9 is the road where our undercover had said she was located.

03:44PM 10 Q Okay. Let me back you up a little bit.

03:44PM 11 What is Apple Maps?

03:44PM 12 A So Apple Maps is a preinstalled application that comes

03:44PM 13 with an iPhone. It's a mapping application, so it allows you

03:44PM 14 to search for locations and allows you to plan directions,

03:44PM 15 routes, that kind of stuff.

03:44PM 16 Q Who needs to initiate the search?

03:44PM 17 A It's a user initiated.

03:44PM 18 Q So you mentioned where this particular search was.

03:44PM 19 Could you describe in this exhibit where you got that

03:45PM 20 location?

03:45PM 21 A So if you're looking in the value column, you can see that

03:45PM 22 the position address search there is Kilohana Drive, and that's

03:45PM 23 in Maui, Kihei, 96753 Hawaii, United States.

03:45PM 24 Q And based on the information in the phone, when was that

03:45PM 25 search for Kilohana Drive conducted?

03:45PM 1 A So this was conducted on March 15th, 2020, approximately
03:45PM 2 6:54 p.m., which was shortly after the undercover had disclosed
03:45PM 3 the location of Kilohana Drive.

03:45PM 4 Q Please turn to Exhibit 17E. 17E has quite a few pages.

03:45PM 5 Could you describe what the contents of Exhibit 17E
03:45PM 6 are for the jury, please?

03:46PM 7 A So this is the content of text messaging conversations
03:46PM 8 between the device and the Kiana contact.

03:46PM 9 Q And based on your involvement in the investigation, are
03:46PM 10 you familiar with the undercover text messages that were sent?

03:46PM 11 A Yes, I am.

03:46PM 12 Q Did you have an opportunity to review those?

03:46PM 13 A Yes, I did.

03:46PM 14 Q And are these text messages that were found on the iPhone
03:46PM 15 of similar sum and substance?

03:46PM 16 A Yes.

03:46PM 17 Q If you can explain to the jury what the blue box signifies
03:46PM 18 in these text messages?

03:46PM 19 A The blue bubble is outgoing messages, so those are
03:46PM 20 messages being sent from the device.

03:46PM 21 Q And on the right-hand side, let's just look at the first
03:46PM 22 blue section. It says -- where it says, "Hi Kiana. My name
03:47PM 23 Lyle."

03:47PM 24 All the way on the right-hand of that bubble, could
03:47PM 25 you describe for the jury the significance of that time and

03:47PM 1 what that means?

03:47PM 2 A So looking at that time there, it says March 15, 2020

03:47PM 3 053737. That's -- in this instance the tool that I used was

03:47PM 4 set to UTC, so UTC is -- Hawaii is the time zone that's 10

03:47PM 5 hours behind UTC. So when you're looking at that time, it says

03:47PM 6 March 15, 2020 at 5:37 a.m., that if you subtract 10 hours from

03:47PM 7 that, it's actually March 14th in Hawaii at 7:37 p.m.

03:47PM 8 Q So in this entire Exhibit 17 that we have looked at, is it

03:47PM 9 fair to say that some of the information is in Hawaii standard

03:47PM 10 time, but other information, such as in Exhibit 17E, is in UTC

03:48PM 11 time?

03:48PM 12 A That's correct.

03:48PM 13 Q What does UTC stand for, if you know.

03:48PM 14 A Universal Coordinated Time or Coordinated Universal Time.

03:48PM 15 Q And so the jury, if they were looking at the undercover

03:48PM 16 chats -- excuse me, undercover text messages that were taken

03:48PM 17 and wanted to compare them with the text messages from the

03:48PM 18 iPhone, they would have to convert the time on the iPhone?

03:48PM 19 A That's correct.

03:48PM 20 Q Could you describe on the left-hand side, the first

03:48PM 21 message that says "Kiana," where does that information come

03:48PM 22 from?

03:48PM 23 A That information being -- is being cross-referenced from

03:48PM 24 the device's address, the stored contact information.

03:48PM 25 Q What about the phone number that's listed next to the name

03:48PM 1 Kiana?

03:48PM 2 A That's -- so that's being pulled from a couple of
03:48PM 3 different locations. It's being pulled from the database that
03:48PM 4 stores the messages, and it's also being cross-referenced to
03:49PM 5 the database that stores the contacts.

03:49PM 6 Q At some point would the user have had to store that
03:49PM 7 contact's name, Kiana, in their phone?

03:49PM 8 A Yes.

03:49PM 9 Q If we could just as an example, turn to page, let's see,
03:49PM 10 eight of that exhibit, please.

03:49PM 11 Could you describe what this photograph shows and
03:49PM 12 whether there are other photographs like this as part of the
03:49PM 13 information that you pulled from the phone?

03:49PM 14 A So this is a picture of our decoy officer. So this is the
03:49PM 15 police officer that was providing the photographs for the
03:49PM 16 undercover account.

03:49PM 17 Q So if there were photographs sent between the user of the
03:49PM 18 iPhone 7 and the Undercover Officer Kiana, would those appear
03:49PM 19 in these text messages?

03:50PM 20 A Yes, they would.

03:50PM 21 Q And if you could turn to page 10 of this exhibit, please.

03:50PM 22 Were there emojis used in the text conversations?

03:50PM 23 A Yes, there are.

03:50PM 24 Q And what are emojis?

03:50PM 25 A Emojis are like those little smiley face and thumbs up

03:50PM 1 things that people put in their text messages now as a way to
03:50PM 2 convey different feelings and thoughts, or like if you're my
03:50PM 3 stepdaughter, that's all you use to communicate with.

03:50PM 4 Q And when the information of the text messages from the
03:50PM 5 phone was extracted, were the emojis included as well?

03:50PM 6 A Yes, they were.

03:50PM 7 Q Can you see an example on page 10?

03:50PM 8 A I can. About halfway down there's the message that starts
03:50PM 9 with "cuddles," there's an emoji there, and then the next
03:50PM 10 message where that starts with "Yeah," there's another emoji
03:50PM 11 there.

03:50PM 12 Q Please turn to Exhibit 17F.

03:51PM 13 Exhibit 17F, this appears to be a photograph; is that
03:51PM 14 right?

03:51PM 15 A That's correct.

03:51PM 16 Q Is this part of the iPhone extraction that you created?

03:51PM 17 A 17F is not part of the extraction. Those are photographs
03:51PM 18 that I took of the phone.

03:51PM 19 Q When did you take those photos?

03:51PM 20 A When I was doing the extraction.

03:51PM 21 Q Where was this \$100 bill found?

03:51PM 22 A That was folded up inside the case, so between the phone
03:51PM 23 and the case.

03:51PM 24 Q Would you turn to page 2, please?

03:51PM 25 And what is this item that we're looking at?

03:51PM 1 A That is the home screen of the phone.

03:51PM 2 Q Is it also known as a background?

03:51PM 3 A Yes. So that's the image that's on the background of the
03:51PM 4 home screen.

03:51PM 5 Q How does that background image get set?

03:51PM 6 A That would have been set by the user.

03:51PM 7 Q What does this purport to show?

03:52PM 8 A Money.

03:52PM 9 Q Please turn to the following page.

03:52PM 10 Could you describe what this is a photo of?

03:52PM 11 A So this is a photo I took of the settings, the device
03:52PM 12 settings menu. This is the main -- when you first go to the
03:52PM 13 settings menu, you'll see there's information about the Apple
03:52PM 14 ID at the top. That's what this picture is showing.

03:52PM 15 Q What's the significance of airplane mode?

03:52PM 16 A Airplane mode disconnects the phone from a cellular
03:52PM 17 network. The purpose for that is we don't want the phone to be
03:52PM 18 connected while we have it, because you can initiate a remote
03:52PM 19 wipe through, like Find My App, Find My iPhone or an Android,
03:52PM 20 you can do it; and what will happen is if it's connected to the
03:52PM 21 network and it gets that signal, that's it it's gone.

03:52PM 22 So one of the things that we do as a precaution to
03:52PM 23 preserve the data on the phone in the state it's in when we get
03:53PM 24 it is to put it into airplane mode or use some other method to
03:53PM 25 isolate it from communications.

03:53PM 1 Q Is that to ensure that the extraction of data that you get
03:53PM 2 is an accurate reflection of what was on the phone?

03:53PM 3 A Yes. Preserves it as it is when we got the phone.

03:53PM 4 Q Please turn to the last page of that exhibit.

03:53PM 5 What information is this?

03:53PM 6 A So this is -- we're still in the settings menu, but the

03:53PM 7 about -- the general settings about menu, this just gives us

03:53PM 8 some basic information about this device. So what you're

03:53PM 9 seeing there is the phone's name, the version of the operating

03:53PM 10 system, the phone model, and then the model number for this

03:53PM 11 device.

03:53PM 12 Q I'm done with Exhibit 17. Thank you. I'd like to turn to
03:53PM 13 a separate topic.

03:53PM 14 One of the things that you said you did as part of
03:53PM 15 this investigation was transport the drugs.

03:53PM 16 A That's correct.

03:53PM 17 Q Could you describe more specifically what you did?

03:53PM 18 A Yes. So basically I checked them out from MPD's evidence
03:54PM 19 room, carried them on the plane, brought them over here and
03:54PM 20 then turned them over to Homeland Security for storage over
03:54PM 21 here.

03:54PM 22 Q And if you could, turn to Exhibit 14A.

03:54PM 23 MS. PERLMUTTER: Your Honor, I would ask to publish
03:54PM 24 this exhibit. It's been previously admitted.

03:54PM 25 THE COURT: Yes, go ahead.

03:54PM 1 (Government's Exhibit 14A, which was previously

03:54PM 2 admitted into evidence, was published to the jury.)

03:54PM 3 BY MS. PERLMUTTER:

03:54PM 4 Q Exhibit 14A, page 2, please.

03:54PM 5 Could you describe for the jury what this document is?

03:54PM 6 A This is one of our -- this is our evidence voucher with

03:54PM 7 our chain of custody on it.

03:54PM 8 Q What does chain of custody mean?

03:54PM 9 A That's just the tracking of who it goes to, so from one

03:54PM 10 person to the next, to the next, to the next.

03:54PM 11 Q And why do you fill out this form?

03:54PM 12 A So there's some level of accountability as to who touched

03:54PM 13 something and when they touched it.

03:55PM 14 Q Is that particularly important to track when you're

03:55PM 15 talking about controlled substances or drugs?

03:55PM 16 A Oh, absolutely.

03:55PM 17 Q Do you see your signature on this form somewhere?

03:55PM 18 A Yes, I do.

03:55PM 19 Q Could you tell the jury where in fact your signature is

03:55PM 20 located?

03:55PM 21 A My signature is on this form twice. If you look on the

03:55PM 22 column that says "Received By," mine is that third one down,

03:55PM 23 that squiggly looking thing, third one down, and then in the

03:55PM 24 "Received From" column, mine is the fourth one down.

03:55PM 25 Q What's the purpose of your signature?

03:55PM 1 A So my signature is in the "Received By" column. That's me
03:55PM 2 receiving the item from our evidence custodian, and the
03:55PM 3 signature in the "Received From" is me signing it over to
03:55PM 4 Homeland Security.

03:55PM 5 Q You mentioned the evidence custodian.

03:55PM 6 Could you describe what that evidence custodian does
03:55PM 7 at the Maui Police Department?

03:55PM 8 A She's responsible for management of the property in the
03:56PM 9 evidence room, so intaking evidence, ensuring it's properly
03:56PM 10 marked, labeled, packaged, tracking where it's being stored and
03:56PM 11 then providing it as needed for investigations, trials, that
03:56PM 12 kind of stuff, in conducting any kind of audits that are needed
03:56PM 13 for the property room.

03:56PM 14 Q Is the evidence room in Maui a secure location?

03:56PM 15 A Yes.

03:56PM 16 Q And do you recognize the, either the employee number or
03:56PM 17 the signature of the evidence custodian on this sheet
03:56PM 18 specifically?

03:56PM 19 A Yes, I do.

03:56PM 20 Q And could you describe for the jury who that is and where
03:56PM 21 that's located on this sheet?

03:56PM 22 A So in this instance the evidence custodian who handled
03:56PM 23 this property was Janice Aquino, and her signature appears
03:56PM 24 three times on here. The first time is in the top line of the
03:56PM 25 "Received From" signature. Then she is on the second line of

03:56PM 1 the "Received By" signature, and she's on the third line of the

03:57PM 2 "Received From" signature.

03:57PM 3 Q Do you recognize the other names or signatures either in

03:57PM 4 the "Received From" or "Received By"?

03:57PM 5 A I do.

03:57PM 6 Q Could you describe for the jury what -- who those people

03:57PM 7 are?

03:57PM 8 A There's two other signatures on here. One is Brandi

03:57PM 9 Kaoni, who is our drug chemist, and then the last one is for

03:57PM 10 Special Agent Murray Acosta of Homeland Security.

03:57PM 11 Q And why would Brandi Kaoni need to sign this form?

03:57PM 12 A Whenever she checks drug evidence out for testing, she's

03:57PM 13 going to sign on the chain of custody.

03:57PM 14 Q What was Ms. Kaoni's involvement in this investigation?

03:57PM 15 A She tested the drugs.

03:57PM 16 Q Did she test the cocaine that was seized?

03:57PM 17 A Yes.

03:57PM 18 Q Did she test the cocaine base that was seized?

03:57PM 19 A She did.

03:57PM 20 Q Is there another name for cocaine base that you're

03:57PM 21 familiar with?

03:58PM 22 A Yes, crack or crack cocaine.

03:58PM 23 Q And is the cocaine base in this case, is it fair to call

03:58PM 24 it crack?

03:58PM 25 A Yes.

03:58PM 1 Q If you could describe specifically what items pertain to

03:58PM 2 this particular property in evidence form?

03:58PM 3 A So this form that we're looking at had ten bags. It says

03:58PM 4 ten bags of cocaine, but some of them were cocaine and some of

03:58PM 5 them were the crack.

03:58PM 6 Q Were these items in a plastic magenta container?

03:58PM 7 A Yes.

03:58PM 8 Q If you could turn to page 4, please.

03:58PM 9 Is this a similar form?

03:58PM 10 A Yes, it is.

03:58PM 11 Q And so the description that you included about the purpose

03:58PM 12 of the form, is that the same as the other form?

03:58PM 13 A Yes, it is.

03:58PM 14 Q Why is there a separate form here?

03:58PM 15 A For every item that we're submitting into evidence,

03:59PM 16 there's going to be a separate chain of custody form.

03:59PM 17 Q And what was the item -- what were the items pertaining to

03:59PM 18 this form?

03:59PM 19 A So this form is four bags of cocaine that were inside of a

03:59PM 20 container.

03:59PM 21 Q Were those secured by the Maui Police Department?

03:59PM 22 A Yes.

03:59PM 23 Q And was that security in a plastic sealed bag?

03:59PM 24 A Yes, so it was sealed in a bag with a heat sealer.

03:59PM 25 Q And actually the prior custody form you looked at related

03:59PM 1 to the cocaine and crack you mentioned, were those items

03:59PM 2 secured in an envelope?

03:59PM 3 A That was in a manila envelope that was sealed, yes.

03:59PM 4 Q And do you see your name on this sheet as well?

03:59PM 5 A Yes, I do.

03:59PM 6 Q And what did you do with the four bags of cocaine within

03:59PM 7 the container?

03:59PM 8 A So I signed them out from our evidence custodian, I

03:59PM 9 brought them over on the plane to Honolulu, and then I signed

04:00PM 10 them over to Homeland Security to be stored over here.

04:00PM 11 Q And are the other names on this form in the received

04:00PM 12 signature lines, are they the same that we previously

04:00PM 13 discussed?

04:00PM 14 A Yes, same people.

04:00PM 15 Q If you could turn to page 6.

04:00PM 16 Describe for the jury what items are a part of this

04:00PM 17 property in evidence form?

04:00PM 18 A This form has four bags of cocaine that were inside of

04:00PM 19 a -- the packaging, the factory case for an iPhone. So when

04:00PM 20 you buy it from the store, that kind of case or box.

04:00PM 21 Q And were those in a clear plastic bag?

04:00PM 22 A Yes. Those were also heat sealed in a plastic bag.

04:00PM 23 Q Are the names included on this form and signatures in the

04:00PM 24 "Received From" and "Received By" the same as in the previous

04:00PM 25 two forms we have discussed?

04:00PM 1 A Yes. Yes, they are.

04:01PM 2 Q Did you also transport THC and marijuana?

04:01PM 3 A Yes, I did.

04:01PM 4 Q And if you could turn to Exhibit B, 14B, and specifically
04:01PM 5 page 15.

04:01PM 6 Could you describe what this property evidence voucher
04:01PM 7 shows?

04:01PM 8 A Well, this one is the chain of custody for marijuana
04:01PM 9 cigarettes.

04:01PM 10 Q And what signatures are on this form that you recognize?

04:01PM 11 A This one has the evidence custodian's signature,
04:02PM 12 Ms. Aquino, myself and Special Agent Acosta with HSI.

04:02PM 13 Q Now, are all these custody forms signed on the dates that
04:02PM 14 are indicated in the right-hand corner?

04:02PM 15 A Yes.

04:02PM 16 Q So over time there will be different people filling them
04:02PM 17 out?

04:02PM 18 A Correct.

04:02PM 19 Q So I'd like to -- I think we're done with those forms.

04:02PM 20 I'd like to talk a little more specifically about the
04:02PM 21 security in transporting, the steps you took.

04:02PM 22 A Okay.

04:02PM 23 Q Could you describe for the jury what steps pursuant to
04:02PM 24 your protocols you took to transport those drugs?

04:02PM 25 A Yes. So to transport these items over from Maui, first

04:02PM 1 thing I do is when I get them from the evidence custodian, I
04:02PM 2 make sure everything is still in the sealed packaging that it
04:02PM 3 was submitted in.

04:02PM 4 Once that's done, I've got it, I put it inside of a
04:02PM 5 paper bag and then I put that into my backpack.

04:02PM 6 We use the law enforcement entrance to get to the
04:02PM 7 airport where once we are there, we take it up and I have it in
04:03PM 8 my bag. So the bag is with me the entire time and I have a
04:03PM 9 partner with me, so there's two of us that are transporting
04:03PM 10 this over here. And then during the transport, I maintain
04:03PM 11 possession of the bag, which stays closed. I had it under the
04:03PM 12 seat in front of me, so it was within my vision the entire time
04:03PM 13 or it was physically on my body the entire time.

04:03PM 14 Once we landed and we got here, we walked it out of
04:03PM 15 the airport where we got picked up by HSI agents, who then
04:03PM 16 brought us to their office and then we transferred custody once
04:03PM 17 we were in the office.

04:03PM 18 MS. PERLMUTTER: Your Honor, at this time I ask for
04:03PM 19 permission to approach to provide Exhibit 12 for inspection to
04:03PM 20 Detective Bigoss.

04:03PM 21 THE COURT: Go ahead.

04:03PM 22 MS. PERLMUTTER: Thank you.

04:03PM 23 BY MS. PERLMUTTER:

04:04PM 24 Q Detective Bigoss, please take a moment to examine Exhibit
04:04PM 25 12, and actually you can take it out of the outer -- yes,

04:04PM 1 exactly.

04:04PM 2 A That makes it a little easier.

04:04PM 3 Q Do you recognize the items in Exhibit 12?

04:04PM 4 A I do.

04:04PM 5 Q And could you describe for the jury what items are

04:04PM 6 included in here?

04:04PM 7 A So in here I can see there's packets of cocaine, crack,

04:04PM 8 and then I can see the tin that was referenced in the evidence

04:04PM 9 forms and then the Apple, the phone, the packaging that was

04:04PM 10 referenced in there?

04:04PM 11 Q Do you see the cocaine base or crack cocaine as well?

04:05PM 12 A Yes.

04:05PM 13 Q Is the item, the manila envelope, the outer packaging that

04:05PM 14 we had previously discussed in 14A, is that included in this?

04:05PM 15 A No, that's not in here.

04:05PM 16 Q Do you see the items that were described to be in the

04:05PM 17 manila envelope in here?

04:05PM 18 A I do.

04:05PM 19 Q Are the items of the cocaine and crack in the tin that you

04:05PM 20 described, are they in substantially the same or similar

04:05PM 21 condition to when you transported them?

04:05PM 22 A Yes, they are.

04:05PM 23 Q Was the date of your transport on or about April 1st,

04:05PM 24 2022?

04:05PM 25 A Yes.

04:05PM 1 MS. PERLMUTTER: Thank you, Your Honor. I have no

04:05PM 2 further questions for this witness.

04:05PM 3 THE COURT: Counsel, would you please retrieve

04:06PM 4 Exhibit 12?

04:06PM 5 MS. PERLMUTTER: Yes, I will.

04:06PM 6 THE COURT: Thank you.

04:06PM 7 Mr. Mottl, cross-examination.

04:06PM 8 MR. MOTTL: Yes.

04:06PM 9 CROSS-EXAMINATION

04:06PM 10 BY MR. MOTTL:

04:06PM 11 Q Good afternoon, Detective Bigoss.

04:06PM 12 A Good afternoon.

04:06PM 13 Q I don't think I have many questions.

04:06PM 14 During your testimony on direct, you used a term and

04:06PM 15 the term was used in reference to, I believe, a number three,

04:06PM 16 which indicated that there was identical information, I gather,

04:06PM 17 from three different areas, and you referred to sources on a

04:06PM 18 phone.

04:06PM 19 What is a source on the phone? Is it a separate

04:06PM 20 memory?

04:06PM 21 I didn't understand your response. Do you know what

04:07PM 22 I'm referring to?

04:07PM 23 A Are you referring to like files on a phone or --

04:07PM 24 Q It could be, yeah, but you used the word "sources." I

04:07PM 25 imagine it could be files or sections of memory. I don't

04:07PM 1 know --

04:07PM 2 A Is this related to the contact that had the number three?

04:07PM 3 Q I believe it was, yes.

04:07PM 4 A So in that instance when I'm saying source, I'm referring
04:07PM 5 to the file --

04:07PM 6 Q I see.

04:07PM 7 A -- on the phone that contained that information.

04:07PM 8 Q Thank you.

04:07PM 9 During the process of extraction, sounds like a
04:07PM 10 monumental task. It's not done by -- you use a computer that
04:07PM 11 has software programming that goes in and does something that
04:07PM 12 enables you to withdraw or extract the information from the
04:07PM 13 target phone, the subject phone?

04:07PM 14 A I'm sorry?

04:07PM 15 Q Or if you can explain the procedure I guess. Could you
04:07PM 16 explain the procedure?

04:08PM 17 A Extraction procedure?

04:08PM 18 Q How extraction takes place, yes.

04:08PM 19 A Sure. So we do have a forensic work station or computer
04:08PM 20 which does have the specific software tools on it. We will
04:08PM 21 first do some research to figure out what is the best method or
04:08PM 22 the best tool for the -- for that extraction based on the type
04:08PM 23 of device, the operating system, that kind of stuff.

04:08PM 24 Once we've done that, if we need to do any preparatory
04:08PM 25 steps on the phone, like in certain phones you need to modify a

04:08PM 1 couple of settings like, say, turn on a communication setting
04:08PM 2 or put it into a special mode, like I had mentioned the DFU
04:08PM 3 mode for the iPhone. Once that's done, then we will plug it
04:08PM 4 into the examination computer and the software tools on the
04:08PM 5 computer will communicate using whatever protocols that they
04:08PM 6 have, and most of that is proprietary, to communicate and
04:09PM 7 retrieve the data from the phone.

04:09PM 8 Q Thank you.

04:09PM 9 When the extraction takes place, is the information
04:09PM 10 that comes out separated according to the type of program that
04:09PM 11 was used to enter it, or how does it -- how is it retrieved or
04:09PM 12 actually come out for you to examine?

04:09PM 13 A So the way that the data comes out is going to be
04:09PM 14 dependent upon a number of different factors, but generally
04:09PM 15 speaking, it's going to be placed into like an archive file or
04:09PM 16 like a containerized file like a zip file or some similar -- in
04:09PM 17 this instance it was a DAR archive, which is similar to that;
04:09PM 18 but basically it's putting it into that containerized file to
04:09PM 19 contain it so that there's no modification being made to it
04:10PM 20 inside, but as it's coming out of the phone, it's coming out
04:10PM 21 based upon whatever communications protocol it's using to
04:10PM 22 request it.

04:10PM 23 Q And is the program that carries this out designed to take
04:10PM 24 everything out that was input following the -- assuming it
04:10PM 25 wasn't erased -- following the purchase and the beginning of

04:10PM 1 the service of the phone, everything?

04:10PM 2 A Are you asking like the scope of what it's pulling or --
04:10PM 3 can you rephrase that, please.

04:10PM 4 Q Essentially the scope and also the thoroughness. Does it
04:10PM 5 take basically everything out of the phone that wasn't in the
04:10PM 6 phone at the time it was purchased?

04:10PM 7 A It will -- well, it depends again on the tool being used
04:10PM 8 in the phone.

04:10PM 9 In this instance for this specific model phone and the
04:11PM 10 operating system, this is not going to pull every piece of data
04:11PM 11 off the phone. There's security protocols that Apple has
04:11PM 12 implemented. There are some other things that are going to
04:11PM 13 prevent us from getting some like system, low level system
04:11PM 14 data, but what this is grabbing is essentially all of the user
04:11PM 15 data that's on the phone at the time we do that extraction. So
04:11PM 16 if it's not on the phone, it's not going to get it. If it is
04:11PM 17 on the phone, it will.

04:11PM 18 Q Basic -- the basic programs that come with an Apple phone
04:11PM 19 where you can take notes, photographs, record music, is all
04:11PM 20 that brought out and subject to your -- does it come out so
04:11PM 21 that you can view it and see exactly what it is? Does it --
04:11PM 22 basically it pulls everything that's been entered by the owner
04:12PM 23 or the person using it?

04:12PM 24 A It can. Again, it's dependent on a number of factors, but
04:12PM 25 like in this instance for this model iPhone and this version

04:12PM 1 and operating system, yeah, it pulled all the user's --

04:12PM 2 Q Everything. Yeah, I was wondering also. So it wasn't

04:12PM 3 selectively in terms of the time interval, it was basically

04:12PM 4 taking everything out and looking for evidence relating to the

04:12PM 5 purpose of your investigation?

04:12PM 6 A So the extraction portion of it will pull all of the data

04:12PM 7 out, all the user data. Not -- Like I said, it doesn't get

04:12PM 8 some of lower level system stuff, but it does get the user

04:12PM 9 data.

04:12PM 10 Q User data. That's a term I didn't...

04:12PM 11 And in terms of going through the user data, are you

04:12PM 12 able to just select out what your interest is or it can be

04:13PM 13 fairly extensive? What did you look at briefly?

04:13PM 14 A The analysis tools give us the ability to filter to

04:13PM 15 specific things based on the investigative needs, because yeah,

04:13PM 16 there's no -- like there's so much data you're not going to go

04:13PM 17 through everything.

04:13PM 18 So in this instance we focused on -- we used date

04:13PM 19 filtering to the dates of our investigation. We used content

04:13PM 20 filtering to look for like specific applications, in this case

04:13PM 21 Skout, and filtered by the telephone number of the undercover

04:13PM 22 and the name Kiana, among others.

04:13PM 23 Q Did you go through photographs that were on phone?

04:13PM 24 A We did go through some photographs, yes.

04:14PM 25 Q Was that done selectively or just at random?

04:14PM 1 A So my methodology with this one was the photographs, as I
04:14PM 2 went through the messages, the analysis, our tools provide us,
04:14PM 3 they cross-reference the photos that are being sent or received
04:14PM 4 in the messages, so I had an idea of what photographs I was
04:14PM 5 looking for based on my initial review of the messages.

04:14PM 6 Q We have two counts here and he was charged with two counts
04:14PM 7 of -- one relating to enticement and commission of a
04:14PM 8 sexually-based assault and the drugs.

04:14PM 9 Did you look for evidence relative to those? He's
04:14PM 10 charged with possession with intent to promote, the numbers,
04:14PM 11 maybe texts relating to drug transactions and things like that?

04:15PM 12 A My examination was focused on the enticement side, child
04:15PM 13 enticement.

04:15PM 14 Q So you were more thorough in that regard rather than the
04:15PM 15 drug-related offense?

04:15PM 16 A Yes, that's correct.

04:15PM 17 Q Now, I'm going to just jump. You testified at the
04:15PM 18 beginning that at the time of the -- at least the time of the
04:15PM 19 arrest of Mr. Cummings, you were more or less in charge, were
04:15PM 20 the quarterback of the activity there.

04:15PM 21 Now did that go back to overall a role that was
04:15PM 22 supervisory or that of a leader in the whole investigation;
04:15PM 23 that is, the investigation, which was primarily a -- related to
04:15PM 24 enticement of children or assault of children? That was
04:16PM 25 within -- that was basically your -- that was your team, you're

04:16PM 1 the quarterback of the investigation?

04:16PM 2 A I'm sorry.

04:16PM 3 Q This Keiki Shield, the joint operation with the federal

04:16PM 4 agents and the use of a chatter to communicate with individuals

04:16PM 5 who later were either suspected or maybe released, or at

04:16PM 6 least --

04:16PM 7 MS. PERLMUTTER: Objection, Your Honor. Is there a

04:16PM 8 question?

04:16PM 9 MR. MOTTTL: Yeah.

04:16PM 10 THE COURT: The objection is sustained.

04:16PM 11 Mr. Mottl, if you've got a question, go ahead and ask

04:16PM 12 it, please.

04:16PM 13 BY MR. MOTTTL:

04:16PM 14 Q What was the extent of your -- you refer to yourself as a

04:16PM 15 quarterback. Was that from beginning to end of both of these

04:17PM 16 cases; that is, Count 1 and Count 2?

04:17PM 17 A Yes. Until we passed it off to Homeland Security, yes.

04:17PM 18 Q And it was for a while in state court in Maui and then

04:17PM 19 eventually it was, at least the enticement was transferred at

04:17PM 20 that time to the federal government, correct?

04:17PM 21 A That's correct.

04:17PM 22 Q In regard to the drug charge, there is an individual,

04:17PM 23 Lucas Hetzler, who was with Maui.

04:17PM 24 Is he -- he was also a detective?

04:17PM 25 A Lucas Hetzler?

04:17PM 1 Q Hetzler, yes.

04:17PM 2 A He's an officer in our vice narcotics unit.

04:18PM 3 Q Did he more or less take over the drug portion of the
04:18PM 4 investigation, these two?

04:18PM 5 A I don't know if he took over or not. I'm not sure.

04:18PM 6 Q Would he have had the authority to independently carry out
04:18PM 7 a search warrant leading to suspected drug activity of
04:18PM 8 Mr. Cummings within the purview of the investigation?

04:18PM 9 A So Officer Hetzler is in a separate investigative unit
04:18PM 10 from me, and he wasn't a part of our enticement operation, but
04:18PM 11 his primary role is to carry out drug investigations.

04:18PM 12 Q I see. Okay. Thank you.

04:18PM 13 I think that -- well, I guess one follow-up. Actually
04:19PM 14 I have two. I think I can limit it to one.

04:19PM 15 At the time of the surveillance and the arrest in
04:19PM 16 Mr. Cummings's case, in the report you have of -- that you made
04:19PM 17 of the activities with the surveillance group, this was in
04:19PM 18 Kihei when Mr. Cummings was arrested, there are other
04:19PM 19 individuals who are mentioned in the surveillance log that was
04:19PM 20 made by you. It's indicated that you created -- you were sort
04:19PM 21 of watching over everything that had taken place, but there
04:19PM 22 were other individuals who were arrested both before and after
04:20PM 23 Mr. Cummings --

04:20PM 24 MS. PERLMUTTER: Objection, Your Honor, relevance.

04:20PM 25 THE COURT: Let me hear the question first.

04:20PM 1 Is there a question, Mr. Mottl?

04:20PM 2 MR. MOTTL: Yes.

04:20PM 3 BY MR. MOTTL:

04:20PM 4 Q They were arrested before and after Mr. Cummings.

04:20PM 5 Was this part of the Operation Keiki Shield and the

04:20PM 6 use of a chatter to in this case contact or at least establish

04:20PM 7 communications with people on Skout as was the case with

04:20PM 8 Mr. Cummings? There are other names that appear throughout the

04:20PM 9 reports who were targets.

04:20PM 10 MS. PERLMUTTER: Objection, Your Honor, relevance.

04:20PM 11 THE COURT: I don't know what the question is, do you,

04:20PM 12 sir?

04:20PM 13 THE WITNESS: Can you rephrase it, please?

04:20PM 14 BY MR. MOTTL:

04:20PM 15 Q Yes. Excuse me. I went through a surveillance log that

04:21PM 16 was -- I believe you were the -- are listed as the reporting

04:21PM 17 person and there ae times entered on a date, and then the

04:21PM 18 activities. In the activities, at one point at 1841 hours was

04:21PM 19 the activity that you described relating to Mr. Cummings.

04:21PM 20 Before that, approximately two-and-a-half hours,

04:21PM 21 there's another individual mentioned who was arrested, same

04:21PM 22 charges, and then also afterwards --

04:21PM 23 MS. PERLMUTTER: Objection, Your Honor, relevance.

04:21PM 24 THE COURT: Mr. Mottl, where is this going?

04:21PM 25 BY MR. MOTTL:

04:21PM 1 Q Were they part of the investigation that you were a
04:22PM 2 quarterback on?

04:22PM 3 THE COURT: Who is "they"? These other people -- were
04:22PM 4 there other people being investigated or pursued by Maui during
04:22PM 5 that same evening that Mr. Cummings was arrested? Is that your
04:22PM 6 question?

04:22PM 7 MR. MOTTL: Yes.

04:22PM 8 THE COURT: The objection is sustained. Move on.

04:22PM 9 BY MR. MOTTL:

04:22PM 10 Q Was the group, your surveillance team, functioning to
04:22PM 11 focus on the communications with Mr. Cummings designed, as you
04:22PM 12 indicated, to result in his arrest and taken into custody, was
04:22PM 13 that related to other activities? Were they into other
04:22PM 14 suspects?

04:22PM 15 MS. PERLMUTTER: Objection, Your Honor, relevance.

04:22PM 16 THE COURT: The objection is sustained.

04:22PM 17 BY MR. MOTTL:

04:22PM 18 Q One last question. There's a reference, an acronym,
04:23PM 19 something referred to as an PML. Does that -- there's a PML
04:23PM 20 Number 1, a PML Number 2.

04:23PM 21 What does PML stand for? It was something that you
04:23PM 22 entered here.

04:23PM 23 A It stands for either preliminary meet location or primary
04:23PM 24 meet location.

04:23PM 25 Q I see. All right.

04:23PM 1 MR. MOTTL: Thank you. No further questions.

04:23PM 2 THE COURT: Any redirect?

04:23PM 3 MS. PERLMUTTER: No, Your Honor.

04:23PM 4 THE COURT: Officer, you may step down.

04:23PM 5 MS. PERLMUTTER: If we could have a brief sidebar

04:23PM 6 about scheduling, otherwise we'll just call our next witness.

04:23PM 7 THE COURT: I don't think you're going to call your

04:23PM 8 next witness unless it's a witness that you can get on and off

04:23PM 9 the stand in five minutes.

04:23PM 10 MS. PERLMUTTER: It is someone we can get on and off

04:23PM 11 in five minutes.

04:23PM 12 THE COURT: All right. Then let's do it.

04:23PM 13 MS. OLSON: The government calls Andrew Cabral.

04:24PM 14 THE CLERK: Please raise your right hand.

04:24PM 15 ANDREW CABRAL,

04:24PM 16 called as a witness, having been first duly sworn, was examined

04:24PM 17 and testified as follows:

04:24PM 18 THE CLERK: Please state your full name, spelling your

04:24PM 19 last name for the record.

04:24PM 20 THE WITNESS: My name is Andrew Cabral. Last name is

04:24PM 21 C-A-B-R-A-L.

04:24PM 22 DIRECT EXAMINATION

04:24PM 23 BY MS. OLSON:

04:24PM 24 Q Good afternoon, Mr. Cabral. I understand you traveled to

04:24PM 25 get here today, and we are very close to the end of the day; so

04:24PM 1 I'm going to be very brief.

04:24PM 2 A Yes, ma'am.

04:24PM 3 Q How were you employed on March 15th, 2020?

04:24PM 4 A I was a police sergeant with the Maui Police Department.

04:24PM 5 Q Are you still with Maui Police Department?

04:24PM 6 A No, ma'am.

04:25PM 7 Q Why not?

04:25PM 8 A I decided to leave the police department voluntarily to
04:25PM 9 give my family a better opportunity elsewhere.

04:25PM 10 Q Is it fair to say you left there of your own choice on
04:25PM 11 good terms?

04:25PM 12 A Yes, ma'am.

04:25PM 13 Q Are you familiar with an investigation leading to the
04:25PM 14 arrest of a person named Lyle Cummings?

04:25PM 15 A Yes, I am.

04:25PM 16 Q What was your role in that investigation?

04:25PM 17 A My role was to help with the transport team during that
04:25PM 18 operation, ma'am.

04:25PM 19 Q Transporting meaning what, from where to where?

04:25PM 20 A So I would transport our in-custodies from the Kihei
04:25PM 21 police station, which is where we had our operation based out
04:25PM 22 of, to the Wailuku Police Station.

04:25PM 23 Q How and why did you first encounter Mr. Cummings on
04:25PM 24 March 15th, 2020?

04:25PM 25 A The reason being is because he was ready for transport

04:25PM 1 from Kihei to the Wailuku Police Station.

04:25PM 2 Q What happened of note next?

04:25PM 3 A I had advised him that it was time for him to be

04:25PM 4 transported from Kihei to Wailuku, and then from there he had

04:26PM 5 advised me in the presence of another law enforcement agent or

04:26PM 6 officer, Sergeant Masa Kaya, that he had medication that he

04:26PM 7 needed from his vehicle, so -- go ahead, ma'am.

04:26PM 8 Q I didn't mean to cut you off.

04:26PM 9 A Okay.

04:26PM 10 Q Prescription medication?

04:26PM 11 A Yes, ma'am, his prescription medication.

04:26PM 12 Q What happened next?

04:26PM 13 A After he had advised me of needing his prescription

04:26PM 14 medication from his vehicle, I gained his verbal consent to

04:26PM 15 have him escorted from the second story of the Kihei Police

04:26PM 16 Station down to the area where his vehicle was held.

04:26PM 17 And then from there he had went in the vehicle,

04:26PM 18 retrieved his prescription medication from an orange bag, and

04:26PM 19 then after he had retrieved it, I escorted him to the transport

04:26PM 20 vehicle and I transported him to the Wailuku Police Station.

04:26PM 21 Q Were there other officers with you at the time?

04:26PM 22 A Yes, ma'am.

04:26PM 23 Q Why did you let him take the medication out himself?

04:26PM 24 A The reason being is I didn't want there to be any

04:27PM 25 allegations that anything was rummaged through from us being

04:27PM 1 police, as well as there being some officer safety concern. So

04:27PM 2 at the time we did have him still in handcuffs.

04:27PM 3 Q Did you or any or officer that night go into his truck in

04:27PM 4 any way or alter the contents of his truck in any way?

04:27PM 5 A No, ma'am.

04:27PM 6 Q Did you conduct any kind of search in the truck that

04:27PM 7 night?

04:27PM 8 A No, ma'am.

04:27PM 9 Q Why not?

04:27PM 10 A Because the plan was to have him escorted and go through

04:27PM 11 the vehicle to grab only his prescribed medication, ma'am.

04:27PM 12 Q Were you aware that officers were obtaining the search

04:27PM 13 warrant for the truck?

04:27PM 14 A That is correct.

04:27PM 15 Q How did you make sure that Mr. Cummings did not disturb

04:27PM 16 the content of the truck other than take his prescription

04:27PM 17 medication?

04:27PM 18 A I watched him and observed him during that time.

04:28PM 19 Q Then you transported him --

04:28PM 20 A Yes.

04:28PM 21 Q -- to Wailuku?

04:28PM 22 A Yes, ma'am.

04:28PM 23 Q At some point did you have him sign a consent form

04:28PM 24 documenting that he consented for you to search the truck to

04:28PM 25 take medication -- to allow him to take medication out of the

04:28PM 1 truck?

04:28PM 2 A Yes, ma'am, I did. Those forms were signed and completed
04:28PM 3 at the Wailuku Police Station after he was transported from
04:28PM 4 Kihei.

04:28PM 5 Q After he got the meds?

04:28PM 6 A Yes, ma'am.

04:28PM 7 Q Is that your normal practice, to have him sign a consent
04:28PM 8 for that type of thing after the medication is obtained?

04:28PM 9 A No, ma'am. It's normally done at the time of.

04:28PM 10 However, having the verbal consent and during the
04:28PM 11 speed of the -- tempo of the operation, I had done it after
04:28PM 12 transport was done.

04:28PM 13 Q Did you or other Maui Police Department officers document
04:28PM 14 in some way what medications were taken out of his truck that
04:28PM 15 night?

04:28PM 16 A Yes, ma'am, it was documented.

04:28PM 17 Q Do you see Mr. Cummings in the courtroom?

04:29PM 18 A Yes, ma'am.

04:29PM 19 Q Can you describe him -- describe an article of clothing
04:29PM 20 and where he is sitting very briefly?

04:29PM 21 A He is sitting over here, and he's wearing a blue
04:29PM 22 button-down collared shirt, ma'am.

04:29PM 23 MS. OLSON: No more questions.

04:29PM 24 THE COURT: Mr. Mottl?

04:29PM 25 MR. MOTTL: Thank you, Mr. Cabral. You came a long

04:29PM 1 way, but we have no questions on cross.

04:29PM 2 THE COURT: All right, Mr. Cabral. You may step down.

04:29PM 3 THE WITNESS: Thank you, Your Honor.

04:29PM 4 THE COURT: Safe travels back home.

04:29PM 5 THE WITNESS: Thank you, sir.

04:29PM 6 THE COURT: Anything else we can accomplish in what

04:29PM 7 remains of the day? I know it's very, very close to 4:30.

04:29PM 8 MS. PERLMUTTER: We can read a stipulation, Your

04:29PM 9 Honor.

04:29PM 10 THE COURT: Sure. Now is a good time to do it.

04:29PM 11 MS. PERLMUTTER: At this time the government would

04:30PM 12 seek to enter into evidence the stipulation of fact marked as

04:30PM 13 Exhibit 18.

04:30PM 14 THE COURT: This has been admitted into evidence

04:30PM 15 during the pretrial conference, so I assume there's no

04:30PM 16 objection, Mr. Mottl; is that correct?

04:30PM 17 MR. MOTTL: Yes, Your Honor, we so stipulate.

04:30PM 18 THE COURT: All right. Counsel, you may read

04:30PM 19 Exhibit 18 into the record.

04:30PM 20 MS. PERLMUTTER: Yes. Could we publish that as well?

04:30PM 21 THE COURT: Yes.

04:30PM 22 MS. PERLMUTTER: "The United States of America and

04:30PM 23 Defendant Lyle Rikio Cummings, by and through their respective

04:31PM 24 attorneys, hereby enter the following stipulation, and agree

04:31PM 25 that the stipulation may be read to the jury and admitted into

04:31PM 1 evidence at trial as an exhibit.

04:31PM 2 "On March 16, 2020, the Maui Police Department,
04:31PM 3 ("MPD") searched a white Toyota truck with license plate number
04:31PM 4 LAJ777, and seized from the truck a cellular telephone (an
04:31PM 5 iPhone 7). This cellular telephone is a device that is capable
04:31PM 6 of acting as a facility or means of interstate commerce through
04:31PM 7 the internet and cellular phone capabilities."

04:31PM 8 Your Honor, we would also seek to admit at this time,
04:31PM 9 Exhibit 20 which is Stipulation of Evidence No. 2.

04:31PM 10 THE COURT: Mr. Mottl, any objection?

04:31PM 11 MR. MOTTL: Your Honor, I hear -- I believe there's a
04:31PM 12 third page to the stipulation that was read and it relates --

04:31PM 13 MS. PERLMUTTER: Oh, yes, thank you, sir. I
04:31PM 14 appreciate that. That is correct. Mr. Mottl is correct, Your
04:31PM 15 Honor. I did not read the final page of the stipulation.

04:32PM 16 THE COURT: Exhibit 18?

04:32PM 17 MS. PERLMUTTER: That is Exhibit 18, yes. Apologies
04:32PM 18 to the jury.

04:32PM 19 "Skout is an internet-based social media platform that
04:32PM 20 operates as a facility or means of interstate commerce."

04:32PM 21 Thank you, Mr. Mottl.

04:32PM 22 At this time I'd like to turn to Exhibit 20, which is
04:32PM 23 Stipulation of Evidence No. 2.

04:32PM 24 THE COURT: All right. Mr. Mottl, any objection to
04:32PM 25 reading this to the jury?

04:32PM 1 MR. MOTT: No, Your Honor.

04:32PM 2 THE COURT: Stipulation of Fact. All right.

04:32PM 3 You may proceed, Counsel.

04:32PM 4 MS. PERLMUTTER: Thank you. May this be published as

04:32PM 5 well?

04:32PM 6 THE COURT: Yes, it may.

04:32PM 7 MS. PERLMUTTER: "The United States of America and

04:32PM 8 Defendant Lyle Rikio Cummings, by and through their respective

04:32PM 9 attorneys, hereby enter into the following stipulation and

04:32PM 10 agree to the following:

04:32PM 11 "On March 15, 2020, the Maui Police Department (MPD)

04:32PM 12 arrested Lyle Cummings, who had been driving a white Toyota

04:33PM 13 truck with license plate number LAJ777 ("the truck").

04:33PM 14 Following the arrest of Lyle Cummings, MPD impounded the truck

04:33PM 15 and had it towed directly from the arrest site to the Kihei

04:33PM 16 Police Station.

04:33PM 17 "On March 16, 2020, the truck was searched at the

04:33PM 18 Kihei Police Station pursuant to a search warrant. "

04:33PM 19 There are no further stipulations, Your Honor.

04:33PM 20 THE COURT: All right. Thank you.

04:33PM 21 Ladies and gentlemen of the jury, these two exhibits,

04:33PM 22 Exhibits 18 and 20, will be documents that you have -- will

04:33PM 23 have with you for deliberations at the appropriate time, but

04:33PM 24 these are two additional stipulations of fact, meaning that the

04:33PM 25 parties agree that these facts that Ms. Perlmutter just read

04:33PM 1 are true. You should treat these facts as having been
04:33PM 2 conclusively proved.

04:33PM 3 With that, do you still wish side bar?

04:33PM 4 MS. PERLMUTTER: No. It was just concerning the last
04:33PM 5 witness.

04:33PM 6 THE COURT: I see. All right. So as we go to break
04:34PM 7 then for the weekend, schedule for next week is going to be as
04:34PM 8 follows:

04:34PM 9 On Tuesday -- Monday is a holiday as you probably
04:34PM 10 know. It's Kamehameha Day. When we resume this trial on
04:34PM 11 Tuesday, we will have for one more day, the same schedule that
04:34PM 12 we have been employing this week, meaning you are directed to
04:34PM 13 show up at 2:00 and we will run to 4:30 on that day.

04:34PM 14 After that day, I finally can pledge to you that we
04:34PM 15 will then resume what I would consider to be our normal trial
04:34PM 16 schedule, meaning starting on Wednesday and any day that's
04:34PM 17 necessary thereafter, we would be going from 8:30 to 1:30.
04:34PM 18 And this is all partly caused by another trial that I'm
04:34PM 19 finishing, and the lawyers know in that case that Tuesday is
04:34PM 20 the last day for them. Okay?

04:34PM 21 So 2:00 to 4:30 on Tuesday; 8:30 to 1:30 thereafter.

04:35PM 22 Any questions? Hands?

04:35PM 23 Good. All right.

04:35PM 24 So as we go to break for the weekend, first of all,
04:35PM 25 enjoy the three-day weekend.

04:35PM 1 Secondly, the admonitions. Please, and this is
04:35PM 2 particularly important and acute because we will not be seeing
04:35PM 3 each other for several days, please refrain from discussing the
04:35PM 4 substance of this case with anyone, including each other, until
04:35PM 5 I advise otherwise; please do not conduct any independent
04:35PM 6 investigation into the facts, circumstances or persons
04:35PM 7 involved; and do not access any media or other accounts of this
04:35PM 8 case that may be out there.

04:35PM 9 Have a wonderful weekend. We will see you on Tuesday
04:35PM 10 afternoon.

04:35PM 11 (At 4:35 p.m., the jury was excused, and the following
04:35PM 12 proceedings were held:)

04:36PM 13 THE COURT: Okay. The record should reflect the
04:36PM 14 departure of all of our jurors, but the remaining presence of
04:36PM 15 counsel for both sides and their clients.

04:36PM 16 Anything that you need to discuss with me before we
04:36PM 17 adjourn.

04:36PM 18 MS. OLSON: No. Thank you, Your Honor.

04:36PM 19 THE COURT: Mr. Mottl?

04:36PM 20 MR. MOTTL: None from the defense. Thank you.

04:36PM 21 THE COURT: I will advise for the parties that we have
04:36PM 22 on the docket, and you may have already noticed, I'm not sure,
04:36PM 23 that we have filed two proposed documents.

04:36PM 24 The first is the Court's proposed set of jury
04:36PM 25 instructions, the second being the Court's proposed verdict

04:36PM 1 form. These are on the docket at 129 and 130.

04:37PM 2 Please take a look at it this weekend, if your time

04:37PM 3 permits, and we will address any issues that you see with these

04:37PM 4 two proposals early on next week.

04:37PM 5 Have a great three-day weekend. We'll see you on

04:37PM 6 Tuesday.

04:37PM 7 (Proceedings were concluded at 4:37 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 9, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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03:18PM

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF HAWAII

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UNITED STATES OF AMERICA,)

CRIMINAL NO. 22-00023-DKW

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Plaintiff,)

Honolulu, Hawaii

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vs.)

June 13, 2023

6

LYLE RIKIO CUMMINGS,)

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Defendant.)

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TRANSCRIPT OF JURY TRIAL (DAY 4)
BEFORE THE HONORABLE DERRICK K. WATSON,
CHIEF UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

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Official Court Reporter:

Gloria T. Bediamol, RPR RMR CRR FCRR
United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

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Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1	I N D E X	
2	<u>GOVERNMENT WITNESSES:</u>	<u>PAGE NO.</u>
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4	DIRECT EXAMINATION BY MS. OLSON	5
5	GREGG KATAYAMA	
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8	<u>EXHIBITS:</u>	<u>PAGE NO.</u>
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1 June 13, 2023 3:18 p.m.

03:18PM 2 THE CLERK: Criminal Number 22-00023-DKW, United
03:18PM 3 States of America versus Lyle R. Cummings. This matter is set
03:18PM 4 for jury trial, day four.

03:18PM 5 Counsel, please make your appearances for the record.

03:18PM 6 MS. OLSON: Good afternoon, Your Honor. ASA Christine
03:18PM 7 Olson, AUSA Rebecca Perlmutter for the United States, and we
03:18PM 8 have paralegal Rae Ann Unten at counsel table, and behind me we
03:18PM 9 have HSI Special Agent Murray Acosta.

03:18PM 10 THE COURT: Good afternoon to all of you.

03:18PM 11 MR. MOTTL: Judge Watson, good afternoon. Joe Mottl
03:19PM 12 attorney for Lyle Cummings. Mr. Cummings is present.

03:19PM 13 THE COURT: All right. Good afternoon to both of you.
03:19PM 14 You may be seated.

03:19PM 15 And good afternoon to the 14 persons on our jury. I
03:19PM 16 want to start with this, and I want to apologize to everybody
03:19PM 17 in the courtroom. The reason we're starting at 3:20 is not
03:19PM 18 because we've been sitting on our hands but at the same time,
03:19PM 19 you know, I know you guys have been waiting. I asked you to
03:19PM 20 get here at 2:00, and I know you were expecting to begin trial
03:19PM 21 at 2:00. That's certainly what I was expecting.

03:19PM 22 The good news is that the other case that we are in
03:19PM 23 trial on went to the jury as I thought we would. It just went
03:19PM 24 an hour plus beyond what time I thought we would get it to the
03:19PM 25 jury. And so what that means is we'll go to 4:30 today. We'll

03:19PM 1 make use of the time that we have together. Starting tomorrow,
03:19PM 2 we will start what I would consider to be the normal trial
03:19PM 3 schedule for the court which is to say 8:30 to 1:30. Again, no
03:20PM 4 lunch. We'll take two short breaks sometime in that five-hour
03:20PM 5 span, and hopefully with us getting back on the normal trial
03:20PM 6 clock, we will make more progress than we have to this point on
03:20PM 7 a per day basis. So again, I apologize.

03:20PM 8 I will reorient you. On Friday when we adjourned, we
03:20PM 9 had just listened to the examinations of both Detective Bigoss
03:20PM 10 from Maui Police Department and former Maui Police Department
03:20PM 11 Officer Cabral who testified as you may recall just the last
03:20PM 12 five or so minutes of -- of the trial day, and so that's where
03:20PM 13 we are.

03:20PM 14 Ms. Olson, I assume the government is ready to call
03:20PM 15 its next witness; is that correct?

03:20PM 16 MS. OLSON: Yes, Your Honor.

03:20PM 17 THE COURT: All right. Please do so.

03:20PM 18 MS. OLSON: The government calls Laura Dai.

03:21PM 19 THE CLERK: Please raise your right hand.

03:21PM 20 LAURA DAI,
03:21PM 21 called as a witness, having been first duly sworn, was examined
03:21PM 22 and testified as follows:

03:21PM 23 THE CLERK: Would you state your full name and spell
03:21PM 24 your last name for the record.

03:21PM 25 THE WITNESS: My name is Laura Dai, spelled D, like

03:21PM 1 David, A-I.

03:21PM 2 DIRECT EXAMINATION

03:21PM 3 BY MS. OLSON:

03:21PM 4 Q Good afternoon.

03:21PM 5 A Good afternoon.

03:21PM 6 Q Would you please tell the jury how are you currently
03:21PM 7 employed?

03:21PM 8 A I am a special agent with Homeland Security
03:21PM 9 investigations.

03:21PM 10 Q And is your title special agent?

03:21PM 11 A Yes.

03:21PM 12 Q How long have you been so employed?

03:21PM 13 A Approximately 30 years.

03:21PM 14 Q Could you give a brief overview of your current duties at
03:22PM 15 HSI?

03:22PM 16 A I am assigned to the criminal investigation's unit. I'm
03:22PM 17 currently assigned to a cybercrime unit. Part of my duty is to
03:22PM 18 include -- investigate federal crimes that -- these being
03:22PM 19 responsible for Homeland Security. And we also handle
03:22PM 20 administrative action as needed.

03:22PM 21 Q Do you have experience investigating crimes against
03:22PM 22 children?

03:22PM 23 A Yes, I do.

03:22PM 24 Q About how many crimes against children would you say you
03:22PM 25 have investigated in your time at HSI, very rough ballpark?

03:22PM 1 A I would say approximately in the hundred different type of
03:22PM 2 cases in my career.

03:22PM 3 Q Have you attended any training specific to investigating
03:23PM 4 child exploitation offenses?

03:23PM 5 A Yes, I have.

03:23PM 6 Q Could you give a very brief summary of those trainings not
03:23PM 7 the content but just describing what the trainings were?

03:23PM 8 A The training consists of -- on the basic training and it's
03:23PM 9 approximately one week into the basic training course, and I
03:23PM 10 also attended advanced training to teach me how to investigate
03:23PM 11 child exploitation crimes. For instance, be mindful of victims
03:23PM 12 and be aware of perpetrators and also in terms of evidence
03:23PM 13 gathering.

03:23PM 14 Q Have you investigated federal enticement of minor cases
03:23PM 15 specifically?

03:23PM 16 A Yes.

03:23PM 17 Q Roughly how many?

03:23PM 18 A I would say roughly approximately 50 of those cases.

03:23PM 19 Q And have you participated in undercover operations in
03:24PM 20 connection with crimes against children?

03:24PM 21 A Yes.

03:24PM 22 Q About how many?

03:24PM 23 A So far I have participated in 16 of those undercover
03:24PM 24 enticement operations.

03:24PM 25 Q Do they have a particular name?

03:24PM 1 A In Hawaii we call it Operation Keiki Shield.

03:24PM 2 Q Do you have training on interviewing people after they've
03:24PM 3 been arrested?

03:24PM 4 A Yes.

03:24PM 5 Q About roughly how many such interviews have you done? And
03:24PM 6 I mean interviews of people shortly after their arrest,
03:24PM 7 roughly, if you know?

03:24PM 8 A I would say easily over in excess of 100.

03:24PM 9 Q Okay. Could you very briefly describe some of the general
03:24PM 10 procedures and considerations you take into account when you're
03:24PM 11 doing these types of post arrest interviews?

03:25PM 12 A First of all, we will bring the person that we interview,
03:25PM 13 and we will let them -- we will first give them their
03:25PM 14 constitutional rights and ensure they are willing to talk to us
03:25PM 15 willfully and make sure the person is in sound mind.

03:25PM 16 Q What happens if they don't want to talk to you willfully?

03:25PM 17 A Then we will stop all conversation right there and then.

03:25PM 18 Q Do you usually have them sign any forms to make sure their
03:25PM 19 testimony or their interview is voluntary?

03:25PM 20 A For the most part, we do. If we have access to the forms,
03:25PM 21 sometimes we do just get a oral confirmation.

03:25PM 22 Q Okay. I'd like to turn your attention to March 15, 2020.

03:26PM 23 Did you participate in a undercover operation that day?

03:26PM 24 A Yes.

03:26PM 25 Q What was -- was this Operation Keiki Shield?

03:26PM 1 A Yes.

03:26PM 2 Q What was your role that day?

03:26PM 3 A That day my role was to conduct interviews and also

03:26PM 4 take -- I was stationed in the command post to take care of

03:26PM 5 whatever action that needed to be taken care of.

03:26PM 6 Q Where was the command post?

03:26PM 7 A Where we have all the team leaders, for example, like the

03:26PM 8 arrest team, the surveillance team, the -- the chatter, the

03:26PM 9 intelligence group. So we have different components all

03:26PM 10 stationed together in a room where we run the operation.

03:26PM 11 Q And where physically on Maui did that take place

03:26PM 12 generally?

03:26PM 13 A That was at the Maui Police Station in Kihei.

03:26PM 14 Q And are you familiar with the investigation leading to the

03:27PM 15 arrest of Lyle Cummings?

03:27PM 16 A Yes.

03:27PM 17 Q You said your role that night was to conduct interviews.

03:27PM 18 Was that your role with respect to Lyle Cummings? I'm sorry,

03:27PM 19 let me back up.

03:27PM 20 How are you familiar with the investigation of Lyle

03:27PM 21 Cummings? How did you first become aware of it?

03:27PM 22 A I -- I was in the command post when this case came about

03:27PM 23 and then we had a chatter who was one of the undercover

03:27PM 24 officer. And then when we became aware of the case that we

03:27PM 25 have a potential person that might be interested to have sex

03:27PM 1 with a child, that's when my focus began in -- later I became
03:27PM 2 the case agent for this.

03:27PM 3 Q Okay. And that night specifically, what did you do with
03:27PM 4 regard to the Lyle Cummings' case?

03:28PM 5 A I was team up with a -- a Maui detective, Lee Ann
03:28PM 6 Galario-Guzman. We both were -- were interviewer but Lee Ann
03:28PM 7 was the lead interviewer. So what we -- give you an example,
03:28PM 8 what we normally do is when we -- when we team up together with
03:28PM 9 a state and a federal partner, we always decide, okay, is
03:28PM 10 this -- are you going to be the lead or is -- is he or she
03:28PM 11 going to be the lead, and then we -- we conduct the interview
03:28PM 12 that way.

03:28PM 13 Q So your job that night was to interview folks who were
03:28PM 14 arrested in the operation after they were arrested?

03:28PM 15 A Yes.

03:28PM 16 Q Okay. And you did so for Mr. Cummings?

03:28PM 17 A Yes.

03:28PM 18 Q Okay. Approximately when did the interview happen, not an
03:28PM 19 exact time but roughly?

03:28PM 20 A It is in the evening of the 15th.

03:28PM 21 Q And where did it happen?

03:28PM 22 A At Kihei station in the Maui Police Department.

03:28PM 23 Q Okay. And who part -- I think you said it but just to
03:29PM 24 clarify, who participated in the interview?

03:29PM 25 A The Detective Lee Ann Galario-Guzman and myself were the

03:29PM 1 interviewers.

03:29PM 2 Q Could you very briefly describe the room where the
03:29PM 3 interview took place?

03:29PM 4 A The room was equipped with audio and video, so it's --
03:29PM 5 it's an enclosed room. Basically, it has a monitor room
03:29PM 6 outside of it. So when -- before we begin, we normally turn on
03:29PM 7 the switch so that it will be audio and video recorded.

03:29PM 8 Q And was that the case here?

03:29PM 9 A Yes.

03:29PM 10 Q Did you or Officer Galarion-Guzman talk to Mr. Cummings
03:29PM 11 regarding anything of substance before that video was switched
03:29PM 12 on?

03:29PM 13 A Yes.

03:29PM 14 Q You did? You did talk to him substantively about the case
03:29PM 15 before the video started?

03:30PM 16 A Oh, no, no, no.

03:30PM 17 Q Okay.

03:30PM 18 A I'm sorry. I misunderstood you.

03:30PM 19 Q And you talked briefly about procedures you normally do to
03:30PM 20 ensure an -- such an interview is voluntary. Did you do those
03:30PM 21 in this case?

03:30PM 22 A Yes, we did.

03:30PM 23 Q Could you describe briefly what you did to make sure this
03:30PM 24 interview with Mr. Cummings was voluntary?

03:30PM 25 A So Mr. Cummings was -- he was escorted to the room and

03:30PM 1 Detective Galario-Guzman and myself went in the room. We
03:30PM 2 identified ourselves by the display of our credentials, and we
03:30PM 3 stated purpose of our interview.

03:30PM 4 Q Did you do anything else? Did you have him sign forms at
03:30PM 5 any time?

03:30PM 6 A Yes. We also have Mr. Cummings sign the rights form from
03:30PM 7 the police department, and I was a witness to that form.

03:30PM 8 Q And what would have happened that evening if he had said
03:31PM 9 he didn't want to talk to you and the other officer or if he
03:31PM 10 didn't want to sign the forms?

03:31PM 11 A Oh, we have to stop the conversation and that would be the
03:31PM 12 end of the interview.

03:31PM 13 Q During the interview, was there anything at all to suggest
03:31PM 14 to you in your training and experience that it was not a
03:31PM 15 voluntary interview?

03:31PM 16 A No. Mr. Cummings was very comfortable.

03:31PM 17 Q Anything out of the ordinary in your training and
03:31PM 18 experience happen during the interview?

03:31PM 19 A No.

03:31PM 20 Q Did you have any impression from your training and
03:31PM 21 experience during the interview that Mr. Cummings was disabled
03:31PM 22 mentally, physically or limited in any way in his ability to
03:31PM 23 participate in the interview?

03:31PM 24 A No.

03:31PM 25 Q Did you follow standard -- did you and Officer

03:31PM 1 Galario-Guzman follow standard procedures during the interview,
03:31PM 2 police practices?

03:31PM 3 A Yes.

03:31PM 4 Q What was the general topic of discussion during the
03:32PM 5 interview?

03:32PM 6 A First, we went into the room. We identified ourselves.
03:32PM 7 We have Mr. Cummings read through the rights and have him
03:32PM 8 initial on the form. And then we ask him if he's willing to
03:32PM 9 talk to us without an attorney present.

03:32PM 10 At that time Mr. Cummings responded yes.

03:32PM 11 We also gave Mr. Cummings the right to -- we also
03:32PM 12 advised him that he can stop the conversation at any time he
03:32PM 13 chooses to.

03:32PM 14 Q And what were -- what were some of the general topics, the
03:32PM 15 content that you discussed generally?

03:32PM 16 A Oh, we explain to him that we will be talking to him about
03:32PM 17 enticement of a child and then we explain to him the reason why
03:32PM 18 he was there was as a result of the arrest.

03:32PM 19 Q Did he engage in that conversation? Did he provide
03:32PM 20 responses?

03:32PM 21 A Yes.

03:32PM 22 Q If you recall and -- what were some of the key takeaways
03:33PM 23 or significant statements that Mr. Cummings said during this
03:33PM 24 interview related to the enticement investigation?

03:33PM 25 A Okay. First of all, he -- Mr. Cummings indicated that he

03:33PM 1 was in possession of his cellphone that he had it in his
03:33PM 2 possession.

03:33PM 3 MR. MOTTL: Excuse me, Your Honor. Objection, I
03:33PM 4 believe we're -- we're going to play the tape. Is that not the
03:33PM 5 case? This -- the record or the interview speaks for itself.
03:33PM 6 So objection as to this line of questioning which is just
03:33PM 7 repeating or -- or providing an interpretation of the -- the
03:33PM 8 video. Nothing further.

03:33PM 9 THE COURT: All right. Objection's overruled.
03:33PM 10 You may answer.

03:33PM 11 MS. OLSON: We'll be brief because we're going to
03:34PM 12 request to play the video.

03:34PM 13 BY MS. OLSON:

03:34PM 14 Q Sorry, continue. You were speaking of the cellphone?

03:34PM 15 A Yes. We -- we intercepted -- we talked to Mr. --
03:34PM 16 Mr. Cummings indicated he -- he was in possession of his
03:34PM 17 cellphone and he indicated that he was chatting with a 13,
03:34PM 18 14-year-old person, and he also stated that he showed her --
03:34PM 19 the undercover officer pictures with -- with moneys and then he
03:34PM 20 also indicated that he would take the undercover officer out
03:34PM 21 shopping and shower her with gifts.

03:34PM 22 Q And was there a name this undercover officer was referred
03:34PM 23 to by?

03:34PM 24 A The undercover officer's name was Kiana.

03:34PM 25 Q That was a fake name, right?

03:34PM 1 A Yes.

03:34PM 2 Q Not the actual name of the undercover?

03:34PM 3 A No.

03:34PM 4 Q Okay. Did he say how the messages were exchanged?

03:35PM 5 A Yes. Mr. Cummings indicated that he first met Kiana on

03:35PM 6 Skout which is a social media app, and then subsequently they

03:35PM 7 exchanged phone number and then they were using texts to

03:35PM 8 communicate with each other.

03:35PM 9 Q Did you discuss Kiana's purported age on Mr. Cummings's

03:35PM 10 knowledge or beliefs about that?

03:35PM 11 A Yeah, it was between 13 and 14 years old.

03:35PM 12 Q When you say "it was," do you -- are you referring to his

03:35PM 13 belief or could you clarify?

03:35PM 14 A That was what Kiana had indicated to Mr. Cummings via

03:35PM 15 text.

03:35PM 16 Q Okay. Did Mr. Cummings make any statements or admissions

03:36PM 17 about the graphic nature of the conversation?

03:36PM 18 A Yes. There was -- at one point it was graphically sexual

03:36PM 19 conversation regarding what they were going to do.

03:36PM 20 Q And did he tell you anything else about the phone that he

03:36PM 21 used to communicate with Kiana or the undercover?

03:36PM 22 A Yes. Mr. Cummings reaffirmed the phone number which I

03:36PM 23 don't remember, and then he also indicated that he was a

03:36PM 24 subscriber to that telephone and he -- he had that telephone

03:37PM 25 number for approximately 20 years. And then from the night of

03:37PM 1 the arrest which was March 15th, and days prior to that, he was
03:37PM 2 in full possession of the phone and he also has the phone
03:37PM 3 password protected.

03:37PM 4 Q Did he say what kind of phone it was, what model?

03:37PM 5 A He did say it was an iPhone 7.

03:37PM 6 Q So I believe you said this interview was video and audio
03:37PM 7 recorded, correct?

03:37PM 8 A Yes.

03:37PM 9 Q Have you watched that video?

03:37PM 10 A Yes.

03:37PM 11 Q Did you see yourself in the video?

03:37PM 12 A Yes.

03:37PM 13 Q Did the video fairly and accurately represent the actual
03:37PM 14 interview that took place?

03:37PM 15 A Yes.

03:37PM 16 MS. OLSON: Your Honor, at this time, I would ask to
03:37PM 17 hand out the transcript of the video interview to the jury and
03:37PM 18 also to publish Exhibit 7 and play the actual video for the
03:38PM 19 jury. The Exhibit 7 was previously admitted by agreement.

03:38PM 20 THE COURT: Yes, you may. The transcript of the video
03:38PM 21 interview is what is marked as Government's Exhibit 8; is that
03:38PM 22 correct?

03:38PM 23 MS. OLSON: Yes, Your Honor.

03:38PM 24 THE COURT: All right. So ladies and gentlemen, in
03:38PM 25 listening to recordings in this case, you -- what the recording

03:38PM 1 that you're about to listen to is what's marked as Government's
03:39PM 2 Exhibit 7 which has been stipulated by the parties into
03:39PM 3 evidence. You have now been given a transcript of the
03:39PM 4 recording that you are about to watch to help you identify
03:39PM 5 speakers, as a guide to help you listen to the recording. Bear
03:39PM 6 in mind that the recording is the evidence in this case not the
03:39PM 7 transcript that you have been given. If you hear something
03:39PM 8 different in the video that you're about to watch then what
03:39PM 9 appears in the transcript which you have been handed, what you
03:39PM 10 hear is controlling not the transcript.

03:39PM 11 Earlier in the trial last week, we talked about the
03:39PM 12 transcript of the email exchange, as you may recall. And at
03:39PM 13 that time, I addressed to you with respect to the transcript of
03:39PM 14 the recording. The transcript is what is in evidence as
03:39PM 15 Government's Exhibit 3, which is the Skout exchange, and
03:39PM 16 Government's Exhibit 4, which is the subsequent email exchange.

03:39PM 17 At the time, Officer Surina testified and he read the
03:40PM 18 texts of -- the context and the texts of those transcripts to
03:40PM 19 you. On a couple of occasions, I observed and you perhaps did
03:40PM 20 as well that he did not read the transcript correctly and that
03:40PM 21 there were portions of his reading that did not match the
03:40PM 22 transcript that is in evidence. In that instance, the evidence
03:40PM 23 is the actual what I call transcript, Exhibits 3 and 4. So to
03:40PM 24 the extent that Officer Surina testified differently than what
03:40PM 25 appeared in that transcript, the transcript's control. So it's

03:40PM 1 almost the opposite of what we're talking about here, okay?

03:40PM 2 All right. Go ahead.

03:40PM 3 (The video was played for the jury.)

04:02PM 4 MS. OLSON: Thank you. We are done with that exhibit.

04:02PM 5 And could we please have the transcript handouts

04:02PM 6 collected.

04:02PM 7 THE COURT: Yes, please do so.

04:02PM 8 MS. OLSON: Okay. Let the record reflect the handouts

04:02PM 9 have been collected.

04:02PM 10 BY MS. OLSON:

04:02PM 11 Q Just a few follow-up questions.

04:02PM 12 Was there any part of that video audio or -- sorry,

04:02PM 13 audio that was not captured in the video?

04:03PM 14 A Yeah, it seems like it was muted.

04:03PM 15 Q Do you know why?

04:03PM 16 A I believe that those part he was giving out his Social

04:03PM 17 Security number, like, addresses, and that is for Mr. Cummings'

04:03PM 18 privacy protection.

04:03PM 19 Q So besides those short portions that were muted out of the

04:03PM 20 video, did this video recording you just watch capture the

04:03PM 21 entirety of the substance of the interview you had that night

04:03PM 22 with Mr. Cummings?

04:03PM 23 A Yes.

04:03PM 24 Q So you didn't have any substantive conversation with him

04:03PM 25 about the case before that recording or after?

04:03PM 1 A No.

04:03PM 2 Q Why didn't you ask him during that interview about any
04:03PM 3 illegal drugs?

04:03PM 4 A I was not aware of any kind of drugs.

04:03PM 5 Q Okay. You were focused on the enticement part of the
04:04PM 6 case?

04:04PM 7 A Yes. That was strictly only enticement case.

04:04PM 8 Q Did you get a good look at Mr. Cummings during that
04:04PM 9 interview?

04:04PM 10 A Yes.

04:04PM 11 Q Do you see him here today?

04:04PM 12 A Yes. He is sitting right there at the table with the two
04:04PM 13 gentlemen.

04:04PM 14 Q Okay. And could you describe an article clothing he is
04:04PM 15 wearing very briefly?

04:04PM 16 A Mr. Cummings is wearing glasses, wearing a -- a brown
04:04PM 17 shirt and having his hands crossed on the table.

04:04PM 18 MS. OLSON: Let the record reflect the witness has
04:04PM 19 identified the defendant.

04:04PM 20 THE COURT: Yes, the record should reflect Special
04:04PM 21 Agent Dai's identification of the defendant, Lyle Cummings.

04:05PM 22 MS. OLSON: No more questions. Thank you.

04:05PM 23 THE COURT: Mr. Mottl, cross-examination?

04:05PM 24 MR. MOTTL: Your Honor, I have no questions for

04:05PM 25 Ms. Dai. Thank you.

04:05PM 1 THE COURT: All right. Special Agent Dai, you may
04:05PM 2 step down.
04:05PM 3 Ms. Olson, your next witness.
04:05PM 4 MS. OLSON: The government calls Gregg Katayama.
04:05PM 5 THE CLERK: Please raise your right hand.
04:05PM 6 GREGG KATAYAMA,
04:05PM 7 called as a witness, having been first duly sworn, was examined
04:05PM 8 and testified as follows:
04:05PM 9 THE CLERK: Please state your full name, spell your
04:05PM 10 last name for the record.
04:06PM 11 THE WITNESS: Gregg Katayama, K-A-T-A-Y-A-M-A.
04:06PM 12 DIRECT EXAMINATION
04:06PM 13 BY MS. OLSON:
04:06PM 14 Q Good afternoon.
04:06PM 15 A Afternoon.
04:06PM 16 Q Can you please tell the jury how you are employed?
04:06PM 17 A Currently employed as a Maui Police Department detective.
04:06PM 18 Q Okay. So is your title detective?
04:06PM 19 A Correct.
04:06PM 20 Q Okay. How long have you been so employed?
04:06PM 21 A For 23 years.
04:06PM 22 Q Do you have any experience investigating drug cases?
04:06PM 23 A Yes.
04:06PM 24 Q How about child sex offenses?
04:06PM 25 A Yes.

04:06PM 1 Q Are you familiar with the investigation leading to the

04:06PM 2 arrest of a person named Lyle Cummings?

04:06PM 3 A Yes, I am.

04:06PM 4 Q How generally did you get involved in that investigation?

04:06PM 5 A I was attached to the Operation Keiki Shield and my job

04:07PM 6 was to draft and execute search warrants.

04:07PM 7 Q Do you have experience and training in drafting and

04:07PM 8 executing search warrants?

04:07PM 9 A Yes.

04:07PM 10 Q Very roughly ballpark how many of those have you worked on

04:07PM 11 in your career?

04:07PM 12 A Over my 23-year career roughly over a hundred.

04:07PM 13 Q Does that include the actual execution of doing the actual

04:07PM 14 search?

04:07PM 15 A Yes.

04:07PM 16 Q And where did this Operation Keiki Shield take -- excuse

04:07PM 17 me, let me -- let me back up.

04:07PM 18 When did this Operation Keiki Shield take place that

04:07PM 19 relates to Mr. Cummings?

04:07PM 20 A Started on March 15, 2020.

04:07PM 21 Q And where on Maui was the operation situated?

04:08PM 22 A Base of the operation was in the Kihei police station.

04:08PM 23 Q Were you at the Kihei police station on March 15, 2020?

04:08PM 24 A I was.

04:08PM 25 Q And how did you first become aware of Mr. Cummings and his

04:08PM 1 case?

04:08PM 2 A Well, around 7:48 p.m., I was informed that Mr. Cummings

04:08PM 3 was under arrest for electronic enticement of a child. I

04:08PM 4 proceeded to the arrest location which is at the intersection

04:08PM 5 of Kilohana Drive and South Kihei Road. I made contact with

04:08PM 6 Mr. Cummings and asked if he'd be willing to give consent for

04:08PM 7 his white 2008 Toyota Tacoma, and he declined to give consent.

04:08PM 8 Q Okay. Let's talk about search warrants a bit. Are you --

04:08PM 9 what is a search warrant?

04:08PM 10 A It's, I guess, an order by the judge granting the officer

04:09PM 11 to search whatever it -- it states in the search warrant.

04:09PM 12 Q Relating to the Operation Keiki Shield in Mr. Cummings'

04:09PM 13 case, did you apply for a search warrant?

04:09PM 14 A I applied for two search warrants. Search warrant

04:09PM 15 2020-0123 covered his vehicle. Specifically I was requesting

04:09PM 16 authorization to go in and get an electronic phone and also any

04:09PM 17 articles of identification and that could include driver's

04:09PM 18 licenses, motor vehicle paperwork, bills, receipts, anything

04:09PM 19 with Mr. Cummings' name on there to prove ownership of the

04:09PM 20 vehicle.

04:09PM 21 Q And what was the second search warrant for that you

04:09PM 22 mentioned?

04:09PM 23 A Search warrant 2020-0124 covered the actual phone itself.

04:10PM 24 Q Why do you need two search warrants since the first

04:10PM 25 warrant you were going to presumably get the phone? Why do you

04:10PM 1 need the second one?

04:10PM 2 A Standard procedure. Normally we would get search warrants

04:10PM 3 for like person, the vehicle, residence, and I guess upon

04:10PM 4 talking to the prosecutors two search warrants would be needed.

04:10PM 5 Q So the second one -- search warrant would be to actually

04:10PM 6 search the actual contents of the phone?

04:10PM 7 A Correct.

04:10PM 8 Q Okay. Were the search warrants granted?

04:10PM 9 A Yes. They were signed by the Honorable Judge Kristin

04:10PM 10 Hamman.

04:10PM 11 Q Do you know when? Do you recall the date?

04:10PM 12 A It was the next day on March 16, 2020.

04:10PM 13 Q Going to the first search warrant for the -- for the --

04:10PM 14 you said vehicle. What type of vehicle was it specifically?

04:10PM 15 A It's a white 2008 Toyota Tacoma.

04:11PM 16 Q And did you participate in doing the actual search of that

04:11PM 17 Tacoma?

04:11PM 18 A Yes, I did.

04:11PM 19 Q When was that?

04:11PM 20 A It was around 10:52 a.m. the next morning so on the 16th.

04:11PM 21 Q Who was present when you executed that search warrant of

04:11PM 22 the truck on March 16, 2020?

04:11PM 23 A It was Detective Jonathan Acosta and Officer Brandon

04:11PM 24 Asuega-Stark also assisting.

04:11PM 25 Q And where was the truck located when you did the search?

04:11PM 1 A The truck was secured in the Kihei police station sally
04:11PM 2 port.

04:11PM 3 Q And was it the -- the same truck that was described in
04:12PM 4 your search warrant?

04:12PM 5 A Yes.

04:12PM 6 Q And where did you search in the -- you and the team, the
04:12PM 7 search team, where did you search in the truck?

04:12PM 8 A We searched the interior of the truck including the back
04:12PM 9 cab area and also the bed of the truck. There is a little
04:12PM 10 compartment built into the truck bed.

04:12PM 11 Q What were you looking for?

04:12PM 12 A Again, the phone which was -- I could see that it was in
04:12PM 13 the area of the cup holder, and also in the articles of
04:12PM 14 identification.

04:12PM 15 Q And I'm going to ask you to look at the return later but
04:13PM 16 if you recall generally what was found in the truck?

04:13PM 17 A Well, in the area of the cup holder, I found one Apple
04:13PM 18 iPhone. Also in the area of the cup holder, I found a clear
04:13PM 19 orange pill container that contained five what looked to me as
04:13PM 20 marijuana cigarettes or joints. Also in the cup holder was a
04:13PM 21 Cookies brand lemoncello flavored THC vape product. THC being
04:13PM 22 tetrahydrocannabinol which is the active ingredient in
04:13PM 23 marijuana.

04:13PM 24 And then went into the center console of the truck.

04:13PM 25 In that center console was a black purse. Inside that black

04:13PM 1 purse was a Sassolini brand tin. To me it looked like an
04:13PM 2 Altoid container. Inside that Altoid -- well, Sassolini brand
04:13PM 3 tin were four clear plastic Ziploc baggies that contained a
04:14PM 4 white powder. Based on my training and experience, I believe
04:14PM 5 that contents of the baggies was cocaine. Also inside that
04:14PM 6 black purse was a red plastic container that had ten additional
04:14PM 7 clear Ziploc baggies. Six of the baggies contained a similar
04:14PM 8 white powder purported to be cocaine, and the four other
04:14PM 9 baggies contained what I believe to be a cocaine base or crack
04:14PM 10 cocaine.

04:14PM 11 Going further into that middle console, I found a
04:14PM 12 Hawaii driver's license belonging to Mr. Cummings, butane
04:14PM 13 lighters and an iPhone box. Inside this box were four larger
04:14PM 14 clear Ziploc baggies also with purported cocaine to be within.

04:14PM 15 And then in the outside of the truck bed that
04:14PM 16 container, like I mentioned, there was a Eagle brand zippered
04:15PM 17 container. Inside that container was two smaller containers
04:15PM 18 that contained a brown substance which I believe to be hashish
04:15PM 19 or marijuana concentrate and some kind of vaping device.

04:15PM 20 Q The cocaine and the substances you just described, was it
04:15PM 21 immediately apparent to you that those were the substances you
04:15PM 22 just said them to be?

04:15PM 23 A Yeah, I highly believed it to be cocaine.

04:15PM 24 Q And was the cocaine all in a powder form?

04:15PM 25 A With exception of those four baggies of the crack cocaine,

04:15PM 1 they were all powder, white powder.

04:15PM 2 Q Was it immediately apparent to you in your training and
04:15PM 3 experience from looking at what you just referred to as crack
04:16PM 4 that it was crack? Was it your belief that it was crack?

04:16PM 5 A Yes.

04:16PM 6 Q Okay. I'd like you to please turn to Exhibit 9.

04:16PM 7 MS. OLSON: And, Your Honor, this has been previously
04:16PM 8 admitted by agreement. I would ask to publish it at this time.

04:16PM 9 THE COURT: Yes, go ahead. Counsel, you let us know
04:16PM 10 if you need us to grab the hard copy but otherwise I will
04:16PM 11 assume that you're using the electronic version.

04:16PM 12 MS. OLSON: Yes, Your Honor. Thank you.

04:16PM 13 BY MS. OLSON:

04:16PM 14 Q Okay. Are you able to see Exhibit 9 well in front of you
04:16PM 15 there on the monitor?

04:16PM 16 A Yes.

04:16PM 17 Q Okay. And what is this?

04:16PM 18 A That is -- looks -- looks like my return affidavit.

04:17PM 19 Q And what does that mean?

04:17PM 20 A Basically, whenever we recover something from a search
04:17PM 21 warrant, we need to itemize it and then go before the judge and
04:17PM 22 she signs off basically of whatever we recovered.

04:17PM 23 Q And is this related to the search of the truck?

04:17PM 24 A Yes.

04:17PM 25 Q Okay. Can we please turn to page three of the same

04:17PM 1 exhibit? What is page three?

04:17PM 2 A That is the itemized list of what myself and the other
04:17PM 3 officers recovered from within the truck.

04:17PM 4 Q Does this list contain all the items you just described?

04:17PM 5 A Yes. It also contained the currency I found within the
04:17PM 6 center console which was \$645 in U.S. currency.

04:18PM 7 Q Okay. Thank you.

04:18PM 8 Let's please turn to Exhibit 10.

04:18PM 9 MS. OLSON: Excuse me, this -- I would ask to publish
04:18PM 10 Exhibit 10. This has also been previously admitted by
04:18PM 11 agreement.

04:18PM 12 THE COURT: Yes, you may.

04:18PM 13 BY MS. OLSON:

04:18PM 14 Q What is Exhibit 10?

04:18PM 15 A Ten would be the return for the cellphone, the contents of
04:18PM 16 the cellphone.

04:18PM 17 MS. OLSON: Your Honor, I would ask now to turn to
04:18PM 18 Exhibit 11 which has been authenticated but not yet admitted.
04:18PM 19 We'd like the witness to please look at what's been previously
04:18PM 20 marked for identification as Exhibit 11.

04:18PM 21 Would that show up to him or does he need the hard
04:19PM 22 copy?

04:19PM 23 THE COURT: We can display it for the witness only.

04:19PM 24 MS. OLSON: Thank you.

04:19PM 25 BY MS. OLSON:

04:19PM 1 Q Are you able to see Exhibit 11?

04:19PM 2 A Yes.

04:19PM 3 Q Okay. I think it would actually be easiest if you could
04:19PM 4 have the physical binder for Exhibit 11, if that's possible.

04:19PM 5 Could you please take a few moments and look through
04:19PM 6 every page of Exhibit 11? Did you look at each page?

04:22PM 7 A Yes.

04:22PM 8 Q Do you recognize Exhibit 11?

04:22PM 9 A Yes.

04:22PM 10 Q How do you recognize it?

04:22PM 11 A Those are photographs taken during the search.

04:22PM 12 Q The search on which date?

04:22PM 13 A The 16th, March 16th.

04:22PM 14 Q You're referring to the search of the truck?

04:22PM 15 A Yes.

04:22PM 16 Q And you were there for the search?

04:22PM 17 A Yes.

04:22PM 18 Q Does the photograph you just looked at fairly and
04:22PM 19 accurately represent the actual search of the truck on
04:22PM 20 March 16, 2020?

04:22PM 21 A Yes.

04:22PM 22 MS. OLSON: Your Honor, I move to admit Exhibit 11.

04:22PM 23 THE COURT: Any objection, Counsel?

04:22PM 24 Mr. Mottl?

04:22PM 25 MR. MOTTL: Your Honor, I'm sorry.

04:23PM 1 THE COURT: Any objection?

04:23PM 2 MR. MOTTL: No, Your Honor.

04:23PM 3 THE COURT: Without objection, Government's 11 is
04:23PM 4 admitted. You may publish if you wish.

04:23PM 5 (Government's Exhibit 11 was received in evidence.)

04:23PM 6 MS. OLSON: I'd move to publish Exhibit 11.

04:23PM 7 THE COURT: Go ahead.

04:23PM 8 BY MS. OLSON:

04:23PM 9 Q Okay. Now, let's talk about these photographs. We'll try
04:23PM 10 to go through the first ones quickly. What is page one of
04:23PM 11 Exhibit 11?

04:23PM 12 A That's the picture of Mr. Cummings' truck with the license
04:23PM 13 plates LAJ 777 affixed to the rear bumper.

04:23PM 14 Q Is that the license plate that matches what was listed in
04:23PM 15 the search warrant?

04:23PM 16 A Yes.

04:23PM 17 Q Please turn to page two. What is page two?

04:23PM 18 A It's the passenger side of that same vehicle.

04:23PM 19 Q Please turn to page three.

04:23PM 20 A That is a picture of the interior of the truck
04:24PM 21 specifically focusing in on the cup holder area.

04:24PM 22 Q And what's -- what's in the cup holder area of
04:24PM 23 significance?

04:24PM 24 A The phone and that orange pill bottle and the -- the
04:24PM 25 Cookies brand THC vape device.

04:24PM 1 Q What was in the orange pill bottle?

04:24PM 2 A The five marijuana cigarettes.

04:24PM 3 Q Please turn to page four. What's shown on page four?

04:24PM 4 A It's the close-up of that, items I just described.

04:24PM 5 Q What's the red stuff there?

04:24PM 6 A That would be a butane lighter.

04:24PM 7 Q Please turn to Exhibit 5. Excuse me, page five of

04:24PM 8 Exhibit 11. What's this?

04:25PM 9 A That is a close-up of the recovered phone.

04:25PM 10 Q And this is the same phone that was just pictured in -- on

04:25PM 11 page four?

04:25PM 12 A Yes.

04:25PM 13 Q And what does that say on the phone of note?

04:25PM 14 A It has the messages Kiana and test.

04:25PM 15 Q If you recall, how did you get this screen to show? How

04:25PM 16 did you get this to light up?

04:25PM 17 A I just touched the exterior button and it illuminated the

04:25PM 18 screen.

04:25PM 19 Q And in the context of this investigation, do you know the

04:25PM 20 significance of why it says Kiana test?

04:25PM 21 A It's my understanding that Kiana was the name of the decoy

04:25PM 22 and the chatters used and the test was to confirm that the

04:25PM 23 device recovered was, in fact, used by Mr. Cummings.

04:25PM 24 Q Do you know how they confirmed it? How did this -- was --

04:26PM 25 how did the word "test" get on here?

04:26PM 1 A After the arrest team made contact with Mr. Cummings, the
04:26PM 2 chatter would send a test message and then it would pop up
04:26PM 3 inside the -- on the phone in the vehicle.

04:26PM 4 Q And I'm not asking for the specific digits but how do they
04:26PM 5 know what phone number to use to send this test message?

04:26PM 6 A That I don't know.

04:26PM 7 Q Okay. Page six. What is this?

04:26PM 8 A That is the orange pill bottle opened up displaying the
04:26PM 9 five marijuana cigarettes or joints.

04:26PM 10 Q Page seven. What is this?

04:26PM 11 A That's a close-up of that vaping device with 91 percent
04:26PM 12 THC.

04:26PM 13 Q Page eight. What is this?

04:26PM 14 A That is Mr. Cummings' medical marijuana license.

04:26PM 15 Q Page nine?

04:27PM 16 A It's a close-up of that aforementioned license.

04:27PM 17 Q Page ten?

04:27PM 18 A That's the exterior shot of the center console.

04:27PM 19 Q Page 11?

04:27PM 20 A That's how we found that black bag or purse within the
04:27PM 21 center console.

04:27PM 22 Q Page 12?

04:27PM 23 A That shows the \$645 recovered from within that bag.

04:27PM 24 Q Is this the same bag that was in the center console?

04:27PM 25 A Yes.

04:27PM 1 Q Page 13?

04:27PM 2 A That's the money fanned out.

04:27PM 3 Q Same money that you just showed on page 12 from the bag?

04:27PM 4 A Yes.

04:27PM 5 Q Page 14?

04:27PM 6 A That's the interior of one of the pockets and it shows an

04:28PM 7 expired Hawaii driver's license for Mr. Cummings.

04:28PM 8 Q Page 15?

04:28PM 9 A Close-up of that license.

04:28PM 10 Q Page 16?

04:28PM 11 A That is Mr. Cummings' HMSA medical card.

04:28PM 12 Q Does it have his name on it?

04:28PM 13 A Yes.

04:28PM 14 Q Page 17?

04:28PM 15 A That's a butane lighter found within that side pocket.

04:28PM 16 Q What is a butane lighter?

04:28PM 17 A Lighter that uses butane. It's commonly used to I guess

04:28PM 18 light most often crack pipes or ice pipes.

04:28PM 19 Q Page 18?

04:28PM 20 A Close-up of that lighter.

04:28PM 21 Q Page 19?

04:28PM 22 A That's that Sassolini tin I was talking about.

04:28PM 23 Q Where was this found?

04:28PM 24 A It's within the bag.

04:28PM 25 Q The black bag in the -- from the console?

04:29PM 1 A Yes.

04:29PM 2 Q Page 20?

04:29PM 3 A Interior of that tin.

04:29PM 4 Q So this is the same tin from page 19 that was found in the

04:29PM 5 black bag?

04:29PM 6 A Correct.

04:29PM 7 Q And when you opened this, what did this appear to you to

04:29PM 8 be?

04:29PM 9 A Appeared to be powdered cocaine.

04:29PM 10 Q Did you make that determination in your training and

04:29PM 11 experience?

04:29PM 12 A Yes.

04:29PM 13 Q Page 21?

04:29PM 14 A The contents of the tin displayed on the seat.

04:29PM 15 Q This was the same tin we were just talking about?

04:29PM 16 A Yes.

04:29PM 17 Q Page 22?

04:29PM 18 A It's the red plastic container containing the ten packets

04:29PM 19 of purported cocaine.

04:30PM 20 Q Can you describe a little bit more of the -- what the

04:30PM 21 contents were or what it appeared to you to be at the time?

04:30PM 22 A Six packets where the same as the contents of that

04:30PM 23 Sassolini tin and four others again were that cocaine base or

04:30PM 24 crack cocaine.

04:30PM 25 Q So when you say it was the same contents as the Sassolini

04:30PM 1 tin, you mean it was also powdered cocaine?

04:30PM 2 A White powder, yes.

04:30PM 3 Q But not the same bags as were in the tin?

04:30PM 4 A Correct.

04:30PM 5 Q Okay. And how many bags of the powder and how many bags

04:30PM 6 of the rocks were in this container?

04:30PM 7 A Six powder and four rocks.

04:30PM 8 Q And where is this being pulled out of in this photograph

04:30PM 9 on page 22?

04:30PM 10 A The black bag.

04:30PM 11 Q The same black bag?

04:30PM 12 A Correct.

04:30PM 13 Q Page 23. What's this?

04:30PM 14 A The contents of that red container displayed.

04:31PM 15 Q Page 24. What's this?

04:31PM 16 A That is a prerolled looks like a marijuana cigarette.

04:31PM 17 Q Okay. Page 25?

04:31PM 18 A That is that iPhone box.

04:31PM 19 Q And where is it located?

04:31PM 20 A The center console.

04:31PM 21 Q So is it correct that this iPhone box was found under the

04:31PM 22 black bag?

04:31PM 23 A Yes.

04:31PM 24 Q You took out the black bag first?

04:31PM 25 A Yes.

04:31PM 1 Q And you didn't know what was going to be under it?

04:31PM 2 A No.

04:31PM 3 Q Page 26?

04:31PM 4 A It's the top of that box.

04:31PM 5 Q Page 27?

04:31PM 6 A Contents of that box.

04:31PM 7 Q What did the contents appear to you to be at the time?

04:31PM 8 A I believed it to be more cocaine.

04:32PM 9 Q Page 28?

04:32PM 10 A The context -- contents of the box displayed on the seat.

04:32PM 11 Q The iPhone box?

04:32PM 12 A Yes.

04:32PM 13 Q Page 29?

04:32PM 14 A That is a picture of -- I think it's his ID case.

04:32PM 15 Q And where is it depicted or where was it found?

04:32PM 16 A That was underneath the purse which was underneath the

04:32PM 17 iPhone box and we found that case.

04:32PM 18 Q In the center console?

04:32PM 19 A Correct.

04:32PM 20 Q Page 30?

04:32PM 21 A Mr. Cummings' Hawaii driver's license.

04:32PM 22 Q Where is it located?

04:32PM 23 A In the center console.

04:32PM 24 Q And --

04:32PM 25 A In that -- that ID holder.

04:32PM 1 Q Is this the same holder as in page 29 that we just looked
04:33PM 2 at?
04:33PM 3 A Yes.
04:33PM 4 Q Okay. Page 31?
04:33PM 5 A That is the glove box. It shows the motor vehicle
04:33PM 6 registration.
04:33PM 7 Q Who does it show the truck was registered to?
04:33PM 8 A Lyle Cummings.
04:33PM 9 Q How do you know that?
04:33PM 10 A It's on the motor vehicle title.
04:33PM 11 Q His name is on there?
04:33PM 12 A Yes.
04:33PM 13 Q Okay. 32?
04:33PM 14 A Same. Another picture of the registration.
04:33PM 15 Q And last page, 33?
04:33PM 16 A That is the back cab portion behind the seats, the
04:33PM 17 passenger seat.
04:33PM 18 Q Anything of note in the investigation?
04:33PM 19 A There was a Duckfat ball cap.
04:33PM 20 Q Did you know at the time if that had any significance?
04:34PM 21 A To my understanding, that was a company owned or founded
04:34PM 22 by Mr. Cummings.
04:34PM 23 Q Did you know it had any significance to the case at the
04:34PM 24 time or no?
04:34PM 25 A I believe I did, yes.

04:34PM 1 Q And what was the connection to the case, the
04:34PM 2 investigation, if you know.

04:34PM 3 A I don't know.

04:34PM 4 Q Okay, that's all right.

04:34PM 5 A Yeah.

04:34PM 6 Q Okay.

04:34PM 7 THE COURT: We are at just about 4:35 so if you would
04:34PM 8 please try to finish up.

04:34PM 9 MS. OLSON: Okay. I think we can be quick and try to
04:34PM 10 move through the rest quickly, if that was the -- the bulk of
04:34PM 11 it.

04:34PM 12 BY MS. OLSON:

04:34PM 13 Q Okay. If you could please quickly look at Exhibit 14
04:34PM 14 which has been previously admitted by agreement. And
04:34PM 15 specifically 14A.

04:34PM 16 MS. OLSON: And I would request to publish 14A at this
04:35PM 17 time.

04:35PM 18 THE COURT: Excuse me. How much longer do you think
04:35PM 19 you have though? You're starting on an entirely new exhibit.

04:35PM 20 MS. OLSON: Five to ten minutes.

04:35PM 21 THE COURT: And that's -- that would complete your
04:35PM 22 direct examination of Detective --

04:35PM 23 MS. OLSON: Yes.

04:35PM 24 THE COURT: Okay. Go ahead.

04:35PM 25 MS. OLSON: Thank you.

04:35PM 1 BY MS. OLSON:

04:35PM 2 Q Okay. Do you see 14A in front of you?

04:35PM 3 A Yes.

04:35PM 4 Q Okay. I'd like you to skip over the first page. Look at
04:35PM 5 page two. What is this?

04:35PM 6 A This is a Maui Police Department evidence voucher.

04:35PM 7 Q What is it for; what's the purpose?

04:35PM 8 A It's to keep a record of the comings and goings of the
04:35PM 9 evidence.

04:35PM 10 Q And what's -- is your name on this?

04:35PM 11 A It's at the bottom of the report is submitted by, the
04:35PM 12 bottom left-hand corner.

04:35PM 13 Q Okay. And do you see sort of towards the top where it
04:35PM 14 says collecting officer?

04:36PM 15 A Yes.

04:36PM 16 Q Is your name there?

04:36PM 17 A Yes.

04:36PM 18 Q Why is your name there? What does that mean on the form?

04:36PM 19 A I'm the one that collected it and submitted it as evidence
04:36PM 20 to this case.

04:36PM 21 Q Okay. And what is the evidence that this form is about?

04:36PM 22 A This one is for the ten bags found in that red container.

04:36PM 23 Q That was the reddish container that was found in the black
04:36PM 24 bag in the console?

04:36PM 25 A Yes.

04:36PM 1 Q Okay. And what did the ten -- remind us, what did the ten
04:36PM 2 bags contain?

04:36PM 3 A Cocaine and it indicates it's NIKG positive and it weighs
04:36PM 4 9.5 grams total.

04:36PM 5 Q And when you say "cocaine," are you including the crack
04:36PM 6 rocks and the powder?

04:36PM 7 A Yes.

04:36PM 8 Q Okay. And how many bags of each of those does this form
04:36PM 9 refer to?

04:36PM 10 A The six powder and four rocks.

04:36PM 11 Q And what does this form indicate -- who does this form
04:37PM 12 indicate you gave these items to?

04:37PM 13 A This shows a chain of custody. So once I submitted it to
04:37PM 14 evidence, I put it in a locked evidence locker. And then it
04:37PM 15 shows that our evidence custodian Janice Aquino received it,
04:37PM 16 took it in from evidence and gave it to our criminalist Brandi
04:37PM 17 Kaoni. And then Brandi put it back into evidence on -- looks
04:37PM 18 like July 13, 2021.

04:37PM 19 Q I think I'll stop you there just for the sake of time.

04:37PM 20 A Okay.

04:37PM 21 Q Sorry to cut you off.

04:37PM 22 Okay. Let's move to page three, please. What is
04:37PM 23 this?

04:37PM 24 A This is how I packaged those ten bags of cocaine. It has
04:37PM 25 the report number, offense, the date I recovered it, roughly

04:37PM 1 the time I submitted it. And the PCN is a unique number that
04:38PM 2 is for this items of evidence. The bottom left corner, it
04:38PM 3 shows each individual weight of each baggie.

04:38PM 4 Q And if we panned back, what is this? What is it showing?
04:38PM 5 Is it just a piece of paper that someone wrote on?

04:38PM 6 A No. It's actually a manila envelope.

04:38PM 7 Q Okay. And was your handwriting on here?

04:38PM 8 A Yes, it's -- mine's on the upper left corner.

04:38PM 9 Q What does the NIKG plus mean at the bottom?

04:38PM 10 A That is a presumptive test that we test. Any drugs we
04:38PM 11 come -- come into contact with, we'll do a specific NIKG, or
04:38PM 12 NIK test kit for cocaine, that would be a letter G.

04:38PM 13 Q Okay.

04:38PM 14 A So we put a -- take a little amount from each individual
04:39PM 15 packet and test for a positive chemical reaction which does
04:39PM 16 tell us whether it is, in fact, cocaine or not.

04:39PM 17 Q And do you know whose handwriting is listed? Whose --
04:39PM 18 whose handwriting lists the weights down here on the bottom
04:39PM 19 left?

04:39PM 20 A That would be Vice Officer Lucas Hetzler who was assisting
04:39PM 21 me in obtaining measurements of each package, baggie.

04:39PM 22 Q And does each of these weights correspond to one of the
04:39PM 23 ten baggies?

04:39PM 24 A Yes.

04:39PM 25 Q And how did Maui PD or you package this? Can you describe

04:39PM 1 it? How did you package the ten baggies?

04:39PM 2 A I put all ten in this manila envelope then I sealed it
04:39PM 3 with evidence tape.

04:39PM 4 Q Okay. If you can turn to page four. What -- is this a --
04:40PM 5 what is this very generally?

04:40PM 6 A That's an evidence voucher which I collected. That is for
04:40PM 7 the four bags of cocaine within the Sassolini tin container.

04:40PM 8 Q Okay. And does this form also indicate that you were the
04:40PM 9 initial collecting officer and you gave it to Janice Aquino in
04:40PM 10 the same manner as the prior form?

04:40PM 11 A Yes.

04:40PM 12 Q Okay. Next page, page five. What is this?

04:40PM 13 A That's how we packaged the -- the Sassolini container. So
04:40PM 14 you can see that the packets are outside the container. My
04:40PM 15 handwriting is in the top part of that plastic bag. And that
04:40PM 16 bag is sealed with a heat seal and my initials and the date are
04:40PM 17 on the seal itself.

04:40PM 18 Q What's inside the tin here?

04:40PM 19 A Inside the tin, I don't -- there's nothing inside the tin.

04:41PM 20 Q What's outside the tin but in the bag?

04:41PM 21 A That would be the four baggies of cocaine found within the
04:41PM 22 tin.

04:41PM 23 Q Okay. Kind of looks like two in this picture but you're
04:41PM 24 saying it's four?

04:41PM 25 A Yes.

04:41PM 1 Q Okay. And does it list the weights here?

04:41PM 2 A Yes, it does.

04:41PM 3 Q Very quickly, what does AG positive mean?

04:41PM 4 A Okay. It's the NIK test kit G positive.

04:41PM 5 Q Okay. If you could turn to page six. Is this a similar
04:41PM 6 form that we were just discussing?

04:41PM 7 A Yes. That's the voucher for the cocaine found in the
04:41PM 8 iPhone case.

04:41PM 9 Q Okay. Page seven. What's page seven?

04:41PM 10 A That is the iPhone case and the four packets of powdered
04:41PM 11 cocaine.

04:41PM 12 Q And the grams here, is this indicating weights?

04:41PM 13 A Yes.

04:41PM 14 Q What are these little PCN numbers written on the baggies
04:42PM 15 that we can barely see under there?

04:42PM 16 A That would be the evidence number assigned to this bag.

04:42PM 17 Q And can you describe briefly how this was packaged?

04:42PM 18 A Again, it would be a heat seal with my initials on the
04:42PM 19 upper left corner.

04:42PM 20 Q Okay. If you could please turn to Exhibit 14B and this
04:42PM 21 one we'll go through even faster. And skip the first three
04:42PM 22 pages and please display page four. If you could just very
04:42PM 23 quickly look through, just flip through the pages in 14B and
04:42PM 24 let us know generally what these are?

04:42PM 25 A This would be the evidence voucher for that THC lemoncello

04:43PM 1 sativa cartridge that was found inside the cup holder.

04:43PM 2 Q Okay. And what's this -- who is Jonathan Acosta? He's
04:43PM 3 listed here as collecting officer.

04:43PM 4 A That was one of the officers that assisted in the
04:43PM 5 executing of the search warrant.

04:43PM 6 Q Okay. And although his name is on here at the top, do you
04:43PM 7 see your name on here also?

04:43PM 8 A Yeah, it would be the bottom of the voucher.

04:43PM 9 Q You guys were working as a team in the search -- executing
04:43PM 10 the search warrant?

04:43PM 11 A Yes. For time constraints, I basically packaged the
04:43PM 12 cocaine and he would handle some of the marijuana items.

04:43PM 13 Q Okay. Page five.

04:43PM 14 A That's a picture of the manila envelope that the
04:43PM 15 lemongello THC vape was placed in.

04:43PM 16 Q Page six?

04:43PM 17 A The other side of that same manila envelope.

04:44PM 18 Q Page seven?

04:44PM 19 A This would be that suspected butane oil which was found in
04:44PM 20 the truck bed.

04:44PM 21 Q Page eight.

04:44PM 22 A How that item was packaged.

04:44PM 23 Q Page nine -- whoops, excuse me. Page nine?

04:44PM 24 A The other side of that manila envelope.

04:44PM 25 Q Page ten?

04:44PM 1 A It's the property voucher for that one marijuana joint.

04:44PM 2 Q Okay. I think for the sake of time I will let the jury
04:44PM 3 look at these in evidence.

04:44PM 4 MS. OLSON: Very quickly, I have what's been mark as
04:44PM 5 Exhibit 12. Your Honor, may I approach with Exhibit 12,
04:44PM 6 approach the witness?

04:44PM 7 THE COURT: Yes.

04:44PM 8 BY MS. OLSON:

04:45PM 9 Q I've handed the witness Exhibit 12. You can take it out
04:45PM 10 of the external sleeve and take just a moment to carefully
04:45PM 11 examine that. Have you seen that before?

04:45PM 12 A Yes.

04:45PM 13 Q What is it?

04:45PM 14 A The contents of the search warrant that I recovered, the
04:45PM 15 Sassolini tin, the small baggies of cocaine in the iPhone case.

04:45PM 16 Q Okay. And can you describe a little bit more specifically
04:45PM 17 how many baggies of cocaine and crack rocks are in there to
04:45PM 18 your knowledge, if you can?

04:45PM 19 A So four crack rocks, and a total of ten small baggies and
04:45PM 20 four larger baggies.

04:45PM 21 Q So this is the same cocaine and crack evidence you took
04:46PM 22 from the truck during the search warrant?

04:46PM 23 A Yes.

04:46PM 24 Q Same drugs we just talked about on custody forms 14 --
04:46PM 25 Exhibit 14A?

04:46PM 1 A Yes.

04:46PM 2 Q Are these in substantially the same condition as when you
04:46PM 3 seized and packaged them?

04:46PM 4 A Yes.

04:46PM 5 MS. OLSON: No more questions.

04:46PM 6 THE COURT: All right. If you would -- Counsel, if
04:46PM 7 you would have the witness repackage what's been marked as
04:46PM 8 Government's 12 and if you would take -- retake custody of it.

04:46PM 9 And that concludes your direct examination of
04:46PM 10 Detective Katayama?

04:46PM 11 MS. OLSON: Yes, Your Honor.

04:46PM 12 THE COURT: All right. With that then, we will recess
04:46PM 13 for the day in this matter. As we do so, I'll remind our
04:46PM 14 jurors to please refrain from discussing the substance of this
04:47PM 15 case with anyone including one another until I advise
04:47PM 16 otherwise; to refrain from accessing any media or other
04:47PM 17 accounts of this case that may be out there; and also to
04:47PM 18 refrain from conducting any independent investigation into the
04:47PM 19 facts, circumstances or persons involved.

04:47PM 20 We will see you tomorrow morning at 8:30. That's a
04:47PM 21 change from our -- the schedule we've been operating under and,
04:47PM 22 again, we will go to 1:30 so if you need to bring a snack or
04:47PM 23 something like that that you want to consume during one of our
04:47PM 24 breaks, please feel free to do so.

04:47PM 25 (At 4:47 p.m., the jury was excused, and the following

1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 12, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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